A

COLLECTION

OF

STATUTES

CONNECTED WITH THE

GENERAL ADMINISTRATION OF THE LAW;

ARRANGED

ACCORDING TO

THE ORDER OF SUBJECTS,

WITH NOTES.

BY

WILLIAM DAVID EVANS, ESQ.

VICE CHANCELLOR OF THE COUNTY PALATINE OF LANCASTER.

VOL. I.

LONDON:

PRINTED FOR J. BUTTERWORTH AND SON, FLEET STREET;

AND J. COOKE, ORMOND-QUAY, DUBLIN.

1817.

TO THE

RIGHT HONOURABLE

CHARLES BATHURST,

CHANCELLOR OF THE DUCHY OF LANCASTER

&c. &c. &c.

THIS WORK

IS MOST GRATEFULLY AND RESPECTFULLY

INSCRIBED.

PREFACE.

IN this collection it is endeavoured to bring together, in a moderate compass, the several Statutes which are connected with the ordinary course of professional and magisterial practice, accompanied by a very few others which appeared to possess an interest as matter of historical curiosity.

In order to accomplish this purpose, it was necessary to exclude all Statutes relating to the functions of the different officers of government—to matters of revenue—to naval and military subjects, and other objects of partial and limited interest.

The Statutes relating to elections of members of parliament might have been included consistently with the general plan of the work, but as they are already contained in different publications appropriated to the particular subject, it was thought, upon the whole, more eligible to include those only which may be regarded as forming a branch of criminal law.

The land revenue of the crown has been admitted as an exception from the general subject of revenue so far as it is connected with the private titles of individuals, but not as it merely forms a matter of official regulation.

The Statutes relating to the clergy—those concerning ship owners, with some of the leading acts of navi-

gation, and some of the Statutes relating to servants in the more extensive branches of manufacture, as falling under the cognizance of a justice of peace, were thought to be of sufficiently general interest to require their admission. Those relating to any other trades and occupations may hereafter be added if it should be found expedient: but as far as I can at present judge, the expence of such an addition would be much more considerable than its utility. Particular collections applicable to separate departments of business may be very desirable.

I have been prevented by the unexpected magnitude of the work from adding a few miscellaneous Statutes not falling within its general scope and design, such as those relating to the union with Scotland and Ireland, the alteration of the style, the offices of sheriff and coroner, the redemption of the land tax, and some others.

In forming a collection of this kind, it is difficult to fix the precise limits between the acts which it would be desirable to admit, and those which it is proper to exclude, and the decision must necessarily involve a certain degree of arbitrary discretion, upon which no two judgments would exactly coincide; but upon the great majority of cases there will, probably, not be any material difference of opinion; and I hope it will not be found, upon a review of the tables of contents, that many acts of general practical utility have been omitted, or that the bulk of the work has been much increased by those which could have been conveniently dispensed with.

In general the acts are inserted without abridgement, as they appear in the ordinary collections of the Statutes, as I felt it important to prevent the misconception of the

work being regarded as an abridgement.—In any future edition it may, perhaps, be found eligible to make some retrenchments with regard to common expressions of style, the recital of former acts of parliament, and certain enactments of frequent and general occurrence, but I am inclined to think, that the saving of expence which can be effected by such a retrenchment, will not be very considerable.

Where some parts only of a Statute are applicable to the general design of the work, the others, relating to temporary or limited objects, are omitted, or only noticed by inserting the marginal abstract. In some cases the titles only are inserted, as sufficiently declaring the object of the act, as in cases of acts by which others are continued or made perpetual, or where the mention of such acts may be considered as merely pointing out, in a general manner, the course and progress of the law upon subjects in respect of which it would be foreign from the principal design of the work to include the entire contents. The mere titles of some acts of parliament would give a very erroneous or inadequate notion of their contents, but, generally speaking, I think they may be considered as sufficiently apposite.

The same difficulties which have been adverted to as affecting the selection of the contents, are, in a certain degree, applicable to their arrangement.—In the general distribution of the work I have followed, as nearly as my judgment would admit, the ordinary plan of a course of jurisprudence; but as the subjects classed in Blackstone's Commentaries, and other systems of law, under the general title of Rights of Things, are so very different in their nature and character as referable to the law of real property, and as referable to personal property and contracts, I have thought it preferable to consider them as separate divisions of the law.—The law of bankruptcy, which, in the Commentaries, is

classed as one of the modes of acquiring personal property, has been thought more properly connected with the law of civil proceedings.—The Statutes respecting the office of a justice of peace as distinguished from the general system of criminal laws, are arranged alphabetically as they occur in Burn's Justice.—Several Statutes might, so far as respects the nature of their subjects, be placed in one or other of different classes without any material ground of preference.—The general course which has been adopted with regard to these has been to insert them in the earliest part of the work to which they have a sufficient relation: on this account the Statutes respecting gaming, usury, stock jobbing, and the sale of offices, are inserted in part III. as affecting the validity of the contract, rather than in part V. as forming a branch of criminal law.—For the same reason, the Statute of Frauds, and the Act *For the Amendment of the Law*, which contain a greater variety of miscellaneous subjects under a common title, than any others in the collection, are included in the class of miscellaneous Statutes concerning real estates. Where any motive of convenience has appeared to require it, the title of the Statute is mentioned in each of the several classes to which it has relation, with proper references to the place of its insertion.—And in some few instances, particular clauses of an act are inserted in the class to which they relate, the act at large being inserted elsewhere.—Where provisions applicable to several distinct and independent subjects included in the same act are sufficiently designated by the title (which principally occurs in the Statutes of George the Second, and, in some instances, with a very ludicrous combination of subjects) they have been considered as if they were completely separate acts, and are arranged accordingly, so far as the respective subjects fall within the general plan of the collection.—The several classes being placed in the more general divisions of the work according to the nature and character of

their principal contents, the particular acts are assigned to their respective classes, although they may not be referable to the same general division.—On this account the Statutes respecting Wales are placed in the part of the work appropriated to civil proceedings, although some of the particular numbers are foreign to that department of the law.—The Statutes respecting juries are included in the same part, although some of them relate solely to criminal law.—The Statutes respecting game and fish are all included in the sixth part as relating to the authority of justices of peace, although some of them, as the late acts respecting deer stealing and oyster fisheries, are not immediately the object of such authority, and there are a few other instances of a similar nature.—In some respects a chronological arrangement might be more convenient than one depending upon the order of subjects, but upon full consideration, the balance appeared to be very much in favour of the latter, and wherever the object is to find a particular act, of which the year and chapter are previously known, it will be only necessary to refer to the chronological table.

To several of the Statutes notes are added of the cases which have been decided upon their construction. In some instances, the notes are applied immediately to the particular expressions upon the construction of which questions have taken place.—In others they assume the character of a dissertation or a digest of the law, as applicable to the general subject.—In the composition of these notes as much attention has been paid to conciseness as appeared consistent with perspicuity.—In the examination of some questions, I have interposed my own views, and canvassed with freedom, but I hope without transgressing the limits of respect, the conclusions of judicial authority. In others, I have ventured to suggest an alteration of the subsisting law, or to offer such opinions as have occurred to me, with regard to

matters of legislative enquiry, which have already en-engaged the public attention, and conceiving that a disinclination to deviate from existing institutions, although proceeding from a laudable principle, has been carried to an inconvenient excess, I have, upon several occasions, adverted to that topic, and in so doing have not been solicitous to avoid a repetition of the same sentiments, or even the recurrence of similar expressions. In one of the numbers of the Appendix, referred to as a note to the act for the amendment of the law, I have entered more at large into the discussion of this very important and interesting subject, and endeavoured, to illustrate the principles which may be usefully applied in the adherence to, or deviation from the existing systems; to counteract the tendency of an excessive dread of innovation, in impeding the course of real and substantial improvement, and to call the attention of those invested with legislative authority to the direct and adequate examination of measures proposed for their adoption, as depending upon their intrinsic merits, divested of the influence of certain favourite expressions which have been too frequently admitted as a substitute for more substantial arguments.

The notes on the Satutes of Limitations, and Set off, and on penal obligations, have been already published in the appendix to a translation of Pothier's Treatise on Obligations.—The article on illegal contracts in the appendix is also extracted from the same work, and is referred to in some of the notes to the Statutes concerning personal property and contracts, as connected with the subjects to which those Statutes immediately relate.—To the Statutes relating to bankrupts, I have subjoined a letter to Sir Samuel Romilly on the revision of the bankrupt law, published in 1810, with the addition of some practical notes.—A few others of the notes are taken from the sixth edition of Salkeld's Reports, published the year 1795.

I have also taken the opportunity of including in the appendix, some papers respecting the proposal of establishing a tribunal for the purpose of restoring the ancient distinction between superior and inferior courts.—These consist of the draft of an act prepared by myself many years ago, and of which copies have been, at various times, submitted to the attention of several persons in authority;—the copy of a bill introduced by Lord Redesdale into the House of Lords in 1810;—and a letter to that noble lord upon the difference in the objects and regulations of the respective plans.—This article may be, in some degree, regarded as an appendage to the provisions in the Statute of Gloucester, prohibiting suits for goods in the king's courts under 40s. and is referred to in the note to that Statute accordingly.—The importance of the subject is very considerable, and if it should ever engage the attention of the legislature, I flatter myself with the hope, that the enquiries respecting it may be assisted by a perusal of the pieces now submitted to their attention.

The plan of this work had been completely framed, and a very considerable progress made in the execution, before the appearance of Mr. Gabbett's publication, entitled "A Digested Abridgement and Comparative View of the Statute Law of England and Ireland."—The design and character of the respective publications are, in some respects, similar, but in others there is a material difference.—Independently of the particular distinction of Mr. Gabbett's Digest, as including the Irish Statutes, it contains a more extensive range of subjects, which are classed under the precise titles of the chapters in Blackstone's Commentaries. The enactments are extracted from the several Statutes as referable to that order, without bringing the whole contents of each particular act together, as they appear in the Statute book, which (subject to the exceptions that have been noticed) is the general course adopted in this collection.

The notes, which are a materiel part of the present work, are not included in the plan of the other --Since Mr. Gabbett's Digest appeared I have frequently availed myself of its assistance, and have every reason to bear testimony in favour of the skill and accuracy which are manifested in its execution. Some references have been made in the notes of this work to the information derived from Mr. Gabbett with respect to the enactments of the Irish Parliament upon similar subjects, and these references would have been much more general and frequent if I could have commanded a greater leisure from other avocations.

Such are the nature and objects of the work which is now submitted to the candour of the public.—Having devoted to it a considerable portion of time and attention I cannot but feel an anxious wish for its favourable reception.—The utility of the design has been very generally acknowledged: frequent enquiries have been made respecting its progress by respectable individuals with whom I have no personal acquaintance or connection, and allusions have been made to it in the course of parliamentary discussion, by which I have been equally gratified and obliged. I am perfectly aware that in many respects, I shall stand in need of indulgence, but I indulge the hope, that the collection, with the accompanying notes, will be found, in a considerable degree, to have accomplished the purposes for which they are intended, and in case of any subsequent editions, shall be happy to avail myself of any suggestions for their correction and improvement.

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† By mistake printed as 52 Geo. III.

PART I.



PERSONS & CORPORATIONS.

Part I. Class 1.

Of Aliens, Denizens, and Naturalization.

[BY 43 Ed. III. c. 10, entitled *Children born beyond Sea if inheritable in England,* upon the Petition in Parliament by the Commonalty, praying that the Children born beyond Sea in the Seigniories of Calais, Guyne, and Gascony, and elsewhere in the Lands and Seigniories of the Lord the King, shall be hereafter as heretofore inheritable of their Heritages in England as other Children born in England, it was enacted and asserted, that the Common Law and the Statute (25 Ed. III. st. 2,) heretofore made upon this Point, shall be observed and kept.

By Statutes 3 R. II. c. 3, 7 R. II. c. 12, 1 Hen. V. c. 7, Aliens were prohibited to take Benefices without the King's Licence.

By 1 Ric. III. c 9, entitled *In what sort Italian Merchants may sell Merchandises—Several Restraints of Aliens,* Provisions are contained to the following Effect:—Italian Merchants shall sell their Merchandises, and gross and employ their Money in the Commodities of this Realm—Strangers shall sell their Wares within eight Months after their Arrival, and employ their Money as above—Strangers may carry away so much as they cannot sell within eight Months—a Stranger shall not be a Host of a Stranger unless he be of his own Country—Aliens shall not buy and sell Wool or Woollen Cloth within this Realm, nor make Woollen Cloth, nor deliver Wool to that End—an Alien shall not be an Handicraftsman—Aliens shall make no Cloth within this Realm—Aliens shall sell their Wares in gross, and not by retail—Aliens shall take no Servant but the King's Subject—the Act not to prevent Aliens from selling Books, written or printed, or inhabiting within the Realm for that Intent,—which Proviso is repealed by 25 Hen. VIII. c. 15.

By 14 and 15 Hen. VIII. c. 2, entitled *What Apprentices strange Artificers shall take,* it is enacted, that no Stranger shall take an Apprentice, but one that was born within the King's Obeisance, upon Pain of forfeiting Ten Pounds—that no Alien shall take above two Journeymen, except they be born within the King's Obeisance. A great many Provisions are inserted for regulating the Wares of Aliens. There is a Proviso, that the Act shall not extend to Strangers in the Universities of Oxford or Cambridge, or within the Sanctuary of Saint Martin's the Grand; and also a Proviso, that it should be lawful for any Lord of Parliament, and others the King's Subjects, having Lands of the yearly Value of One Hundred Pounds, to retain Strangers, Joiners and Glaziers, in their Service.

The next Statute connected with the Subject is 21 Hen VIII. c. 16, "*Touching Artificers, Strangers, what they may do as concerning retaining Apprentices, Journeymen, &c.* by which it is provided, amongst other Things, that no Stranger, Artificer, shall keep in his House above two Strangers born—(which is repealed by Stat. 5 Eliz. c. 4,)—that no Alien, dwelling in Oxford, Cambridge, or Saint Martin's le Grand, shall have above ten Persons, Aliens, in his House—and a Decree of the Star Chamber, containing a Preamble respecting the Mischiefs arising from the continual Resort of Strangers, to the Detriment of our own natural Subjects, followed by several particular Regulations, amongst

others, that no Strangers but Denizens shall keep House or Shop, is ratified and confirmed.

The 22 Hen. VIII. c. 13, was passed for Bakers, Brewers, Surgeons, and Scriveners, not to be accounted Handicraftsmen

By the Stat. 32 H. VIII. c 16, the Stat. of Richard, *Concerning Strangers*,—the King, calling into his blessed Remembrance the infinite Number of Strangers & Aliens, which do daily increase and multiply within his Grace's Realms and Dominions, in excessive Numbers, to the great Detriment, Hindrance, Loss, and Impoverishment of his Grace's natural and liege Subjects, and noticing the former Statutes upon the Subject, (1 R. III. 14 and 15 H VIII 21 H VIII) which have been frustrated chiefly by means of Letters Patent, obtained by the crafty Suits, Inventions, and Practices of Strangers lately made Denizens, which contend that every such Denizen shall be as free as Englishmen naturally born within the King's Grace's Dominions, any Acts or Statutes to the contrary notwithstanding,—It is enacted, that all Denizens shall be bound and obedient by and unto all the aforesaid Acts and Statutes, and to all the Contents of the same, and to all other Acts and Statutes of this Realm heretofore made, now being in their force and not repealed, any Letters Patent or Ordinances heretofore made, or hereafter to be made to the contrary thereof, in any wise notwithstanding; and that, also, in all and every Letter Patent for the Making of any Denizen, to be made to any Stranger not being born under the King's Grace's Obeisance, shall be contained a Proviso, that he or they, to whom such Letters Patent shall be granted, shall be bound and obedient by and unto all the Acts and Estatutes of this Realm as is aforesaid, and to all and every the Contents of the same, except it shall be the King's most gracious Pleasure to grant to any such Alien any special Liberties or Privileges more or otherwise than is contained in the said Estatutes; and in that Case, all such Liberties and Privileges so to be granted to any such Alien, contrary to the Form of any of the said Estatutes, shall be plainly, wholly, and particularly expressed, specified, and declared by special Words, as well in the Bill assigned with the King's Grace's Hand for obtaining any such Grant, as in the Letters Patent, to be made out of the Chancery, for and concerning the same In the same Act are contained Provisions, that no Alien dwelling in Oxford, &c. shall keep above two Servants, that are Strangers, at one Time—that every Alien shall be bound by and unto the Laws and Statutes of this Realm, and to all and singular the Contents of the same—that no Person may keep above two Strangers at one Time, except Lords of Parliament, who may keep six—and lastly, it is enacted, by Sec. 13, that all Leases of any Dwelling-house or Shop, within this Realm or any of the King's Dominions, made to any Stranger, Artificer, or Handicraftsman, from out of the King's Obeisance, not being Denizen, from and after the Feast of Saint Michael the Archangel next ensuing, shall be void and of none Effect; and that no Stranger, Artificer, or Handicraftsman, born out of the King's Obeisance, not being Denizen, shall, after the same Feast, take any Lease of any Dwelling-house, or Shop, within this Realm, or in any other the King's Dominions, upon pain to lose and forfeit, for every Time doing contrary to this Act, One Hundred Shillings; and that no Persons, after the same Feast, shall grant or let to farm any Dwelling-house or Shop, to any such Stranger, Artificer, or Handicraftsman, not being Denizen, to the intent to dwell or inhabit in the same, upon like Pain of One Hundred Shillings, the one Moiety of which Pains and Forfeitures to be to the King our Sovereign Lord, and the other Moiety to such as will sue for the same.

As the above Provisions are not now of any practical Importance, it was thought preferable to refer to them by way of Note, rather than to insert them in the Body of the Collection.

There are several Regulations in the Statute Book respecting the Payment of additional Duties by Aliens, but I apprehend that these have become obsolete since the Passing the Statute 27 Geo. III. c. 13, for Consolidating the Duties on the Customs, by which all former Duties are repealed, and in this and the subsequent Acts upon the Subject, for regulating the Amount of Duties, no Distinction is made with respect to Aliens.

By 6th Ann, c. 36, *For the Encouragement of the Trade to America,* Sec. 20, Provision was made for naturalizing foreign Seamen, who should serve on Board any of her Majesty's Ships of War, or any Privateer or Merchant Ship, belonging to any of her Majesty's Subjects, during the then present War, according to the Provisions of the Act.

By 13th Geo. III. c 3. *For the better Supply of Mariners and Seamen, to serve in his Majesty's Ships of War, and on Board Merchant Ships and other Trading Ships and Privateers,* Permission is given to employ a greater Proportion of foreign Seamen than is allowed by Statute 12, Chas. II. and by Sec 11, it is enacted, that for encouraging foreign Mariners and Seamen to come and serve on board Ships belonging to Great Britain, every such foreign Seamen or Mariner, who shall have lawfully served, during the Time of War, on board any of his Majesty's Ships of War, or any Merchant or other Trading Ship or Vessel, or Privateer, which, at the Time of such Service, shall belong to any of his Majesty's Subjects in Great Britain, shall be deemed and taken to be a Natural Born Subject of his Majesty's Kingdom of Great Britain, and have and enjoy all the Privileges, Powers, Rights, and Capacities, which such foreign Mariner or Seamen would have had and enjoyed, in case he had been a Natural Born Subject of his Majesty, and actually a Native within the Kingdom of Great Britain, subject to the Restrictions mentioned in Stat. 12 & 13 W. III. c. 2. Section 3 provides, that no Persons naturalized thereby shall be enabled to be of the Privy Council, or a Member of either House of Parliament, or to take any Office or Place of Trust, civil or military, or to have any Grant of Lands from the Crown to himself, or any other Person in Trust for him—and by Section 4, it shall be lawful for his Majesty, in any future War, to publish a Proclamation to permit Ships to be manned with foreign Mariners, in the Manner provided by the Act; and upon the publishing such Proclamation, the Act and every Thing therein contained, shall be deemed in full Force and Virtue, during such War—and by 20 Geo. III c 10, *For the better Supply of Mariners and Seamen, to serve in his Majesty's Ships of War, and on board Merchant Ships and other Trading Ships and Vessels,* after reciting a Doubt whether Seamen, who had served during the then present Hostilities, should be deemed natural Subjects by Virtue of the Act of 13 Geo. II. it is declared, that that Act and every Thing therein contained is and has been continued to be in full Force.

By 22 Geo. II. c. 45, *For the further Encouragement and Enlargement of the Whale Fishery, and for continuing such Laws as are therein mentioned relating thereto, and for the Naturalization of such foreign Protestants as shall serve, for the Time therein mentioned, on board such Ships as shall be fitted out for the said Fishery,* certain Provisions are made for the Purpose last mentioned, which, on Account of the limited Nature of the Subject, it is not thought material to notice.

Previous to the Commencement of the War of the French Revolution, an Act was passed, 33 Geo. III. c. 4, *For establishing Regulations respecting Aliens arriving in this Kingdom, or resident therein in certain Cases,* which was continued from Time to Time during the War. Upon the Termination of the War, the Statute 42 Geo. III. c. 92 was passed, *For repealing several Acts for establishing Regulations respecting Aliens arriving in this Kingdom, or residing therein in certain Cases, and for substituting other Provisions in lieu thereof.* Upon the recommencement of Hostilities, the Statute 43 Geo. III. c. 155 was passed *To repeal an Act passed in the last Session of Parliament, for establishing Regulations respecting Aliens arriving in this Kingdom, or resident therein, and for establishing, until three Months after the Ratification of a Definitive Treaty of Peace, Regulations respecting Aliens arriving in this Kingdom, or resident therein;* and upon Conclusion of the late Peace, the Statute 54 Geo. III. c. 155, *to repeal an Act for establishing Regulations respecting Aliens arriving in or resident in this Kingdom in certain Cases, and for substituting other Provisions, until the End of the next Session of Parliament in lieu thereof.* If any permanent Act should be passed upon the Subject, previous to the Appearance of this Collection, it will most probably be inserted or noticed in the Appendix.]

By the Irish Statute, 14 & 15 Chas II. c. 13, foreign Traders, Manufacturers, Mariners, &c. being Protestants, who should, within seven Years, transport themselves with their Stock to Ireland, are naturalized, taking the Oaths.

These Provisions are continued with some Variation, and are rendered more comprehensive, extending to all Persons except Jews, subject to certain Regulations, by 19 & 20 Geo. III. c. 29—23 & 24 Geo. III. c. 38. The Statute 36 Geo. III. c. 48 contains further Provisions upon the Subject, and seems to annul the Exception of Jews, but confines the Benefit of the Statutes to Persons who shall previously have obtained a Licence from the Chief Governor in Council.—See 1 Gabbett, c. 10, p. 307.

For Statutes 11 & 12 W. III. c. 6, for enabling natural born Subjects to inherit, notwithstanding their Parents were Aliens, and 25 Geo. III, c. 39, obviating Doubts on that Statute, see Part II. Class 1.]

No. 1.

25 Edward III. Stat 2.

A Statute made Anno 25, Edw. III. Stat. 2, and Anno Dom. 1350, of those that be born beyond Sea.—In what Place Bastardy pleaded against him that is born out of the Realm shall be tried.

[*Ex Rot. in Turr. Lond. m.* 19.]

" OUR Lord the King, at " his Parliament holden at " Westminster, at the *Utas* of the " Purification of our Lady, the " Year of his Reign of *England* " the Five and twentieth, and of " *France* the Twelfth, consider- " ing the great Mischiefs and Da- " mages which have happened to " the People of his Realm of " *England*, as well because that " the Statutes ordained before this " Time have not been holden and " kept as they ought to be, as be- " cause of the mortal Pestilence " that late reigned, and willing " to provide for the Quietness " and common Profit of his said " People convenient Remedy;" ' therefore by the Assent of the ' Prelates, Earls, Barons, and ' other great Men, and all the ' Commons of his said Realm ' summoned to the Parliament, ' hath ordained and established ' the things under-written, *vide- ' licet*, Because that some People ' be in Doubt, if the Children ' born in the Parts beyond the ' Sea, out of the Ligeance of ' *England*, should be able to de- ' mand any Inheritance within the ' same Ligeance, or not, whereof ' a Petition was put in the Par- ' liament late holden at *Westmin- ' ster*, the seventeenth Year of the ' Reign of our Lord the King that

NOSTRE Seignur le Roi a son parlement tenuz a Westm' a les Oetaves de la Purification de nostre Dame lan de son regne d'Engleterre vintisme quint & de France douszisme considerant les grantz meschiefs & damages qe sont avenuz au people de son Roialme d' Engleterre sibien pur ce qe les estatuz devant ces heures ordenez noont mie este tenuz & gardez come ils deveroient come par cause de la pestilence mortielle qe nadgairs dura & vuellant purvoier au quiete & commune profit de son poeple sur ce remedie covenable par assent de Prelatz Countz Barons & autres grantz & tote la Communalte de son dit Roialme au dit parlement somons ad ordene & establi les choses souzescriptes cest assavoir pur ce qe ascunes gentz estoient en awere si les enfantz neez es parties de dela dehors la ligeance d'Engleterre serroient ables a demander heritage deinz meisme la ligeance ou nemie de quoi petition feust mis autrefoitz en parlement tenuz a Weymonster lan nostre dit Seignur le Roi dys & septiseme & ne feust mie a tieu

No. 1.
25 Edward III. Stat 2.

temps en tout assentu nostre dit Seignur le Roi veulliant qe totes doutes & awers feussent oustez & la lei en ce cas declaree & mis en' certein fist charger les Prelatz Countes Barons & autres sages de son conseil assemblez a ce parlement a faire deliberation sur cel point Les queux dun assent ount dit qu la lei de la Corone d'Engleterre est & ad este touz jours tiele qe les enfantz des Rois de d'Engleterre queu part qils soient neez en Engleterre ou aillours sont ables & deivent porter heritage apres la mort lour auncestres la quele lei nostre Seignur le Roi les ditz Prelatz Countz Barons & autres grantz & tote la Communalte assemblez el dit parlement approevent & afferment pur toutz jours. Et en droit des autres enfantz neez hors de la ligeance d'Engleterre en temps nostre dit Seignur le Roi si sont ils uniement acordez qu Henri sitz Johan de Beaumound Elizabeth fill Guy de Bryan & Giles fitz Rauf Daubeneye & autrres queux le Roi vorra nomer qu nasquirent par dela hors de la ligeance d'Engleterre soint desore ables davoir & enjoier leur heritages apres la mort lour auncestres totepartz deinz la ligeance d'Engleterre si avant come ceux qi nasquirent deinz meisme la ligeance. Et qe touz les enfantz heriters qi serront neez desore dehors la ligeance le Roi des queux enfantz les piere & miere au temps du nestre sont & serront a la soi & de la ligeance du Roi d'Engleterre eient & enjoient meismes les benefice & avantage daver & porter heritage

'now is, and was not at the same 'Time wholly assented; our Lord 'the King, willing that all Doubts 'and Ambiguities should be put 'away, and the Law in this case 'declared and put in a Certainty, 'hath charged the said Prelates, 'Earls, Barons, and other wise 'Men of his Council, assembled 'in this Parliament, to deliberate 'upon this Point; all which of 'one Assent have said, That the 'Law of the Crown of *England*. 'is, and always hath been such, 'that the Children of the Kings of '*England*, in whatsoever Parts 'they be born, in *England* or 'elsewhere, be able and ought to 'bear the Inheritance after the 'Death of their Ancestors, which 'Law our said Lord the King, 'the said Prelates, Earls, Barons, 'and other great Men, and all the 'Commons assembled in this 'Parliament, do approve and af-'firm for ever. And in the Right 'of other Children born out of 'the Ligeance of *England* in the 'Time of our Lord the King, they 'be of one Mind accorded, that '*Henry* Son of *John de Beau-'mond*, *Elizabeth* Daughter of '*Guy de Bryan*, and *Giles* Son 'of *Ralph Dawbeny*, and other 'which the King will name, 'which were born beyond the 'Sea, out of the Ligeance of *Eng-'land*, shall be from henceforth 'able to have and enjoy their In-'heritance after the Death of their 'Ancestors, in all Parts within 'the Ligeance of *England*, as 'well as those that should be 'born within the same Ligeance. 'And that all Children Inheri-'tors, which from henceforth 'shall be born without the Li-'geance of the King, whose Fa-'thers and Mothers (1) at the 'Time of their Birth be and shall 'be at the Faith and Ligeance of 'the King of *England*, shall 'have and enjoy the same Bene-'fits and Advantages, to have and 'bear the Inheritance within the

The King's Children be inheritable in England, wheresoever they be born.

The Children of others born beyond the Sea. 42 Ed. III c 10 Denizen, Br. 14

1 R III. f 4 Dyer 224. Co Lit. 8. 4 Geo. II. c. 21

(1) In Doe *v.* Jones, 4 T. R. 300, it was argued, that this Provision attached, if either of the Parents were natural born Subjects—but ruled contra. As to Children of natural born Fathers, see 4 G. II. c. 21, post No. 13; as to Grand Children, 13 Geo. III. c. 21, post No. 17.

No 1.
25 Edward III. Stat. 2.

Trial of Bastardy pleaded against him which is born out of England. Rast. 105.

'same Ligeance, as the other Inheritors aforesaid in Time to 'come; so always that the Mothers of such Children do pass 'the Sea by the Licence and Wills 'of their Husbands. And if it be 'alledged against any such born 'beyond the Sea, that he is a 'Bastard, in case where he ought 'to have Cognisance of Bastardy, 'it shall be commanded to the 'Bishop of the Place where the 'Demand is, to certify the King's 'Court where the Plea thereof 'hangeth, as of old Times hath 'been used in the Case of Bastardy alledged against them 'which were born in *England*.'

deinz la dite ligeance come les autres heriters avantditz en temps avenir Issint totes foitz qe' les mieres de tieux enfantz passent la meer par conge & volunte de lour barons. Et si alleggee soit contre nul tiel nee par dela qil est bastard en cas ou Levesqe doit avoir conissance de bastardie soit maunde a Levesque du lieu ou la demande est de certifier la Court le Roi ou le ple ent peode si come auncienement ad este usee en cas de bastardie alegge contre ceux qi nasquirent en Engleterre.

No. 2.

43 Edward III. c. 10.—Children born beyond Sea, inheritable in England.

[See Note to the Title of this Class.]

No. 3.

1 Richard III. c. 9.—In what Sort Italian Merchants may sell Merchandises—Several Restraints of Aliens.

[See Note as in last Number.]

No. 4.

14 & 15 Henry VIII. c. 2.—What Apprentices Strangers, Artificers, shall take.

[See Note ut supra.]

No. 5.

21 Henry VIII. c. 16.—Touching Artificers, Strangers, what they may do as concerning retaining Apprentices, Journeymen, &c.

[See Note ut supra.]

No. 6.

22 Henry VIII. c. 13.—For Bakers, Brewers, Surgeons, and Scriveners, not to be accounted Handicrafts.

[See Note ut supra.]

No. 7.

32 Henry VIII. c. 16.—Concerning Strangers.

[See Note ut supra.]

No. 8.

7 Jac. I. c. 2.—An Act that all such as are to be naturalized, or restored in Blood, shall first receive the Sacrament of the Lord's Supper, and the Oath of Allegiance and the Oath of Supremacy.

'FORASMUCH as the Naturalizing of Strangers, and restoring to 'Blood Persons attainted, have been ever reputed Matters of mere 'Grace and Favour, which are not fit to be bestowed upon any others 'than such as are of the Religion now established in this Realm;' Be it therefore enacted by the King's most excellent Majesty, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, That no Person or Persons of what Quality, Condition, or Place soever, being of the Age of Eighteen Years or above, shall be naturalized or restored in Blood, unless the said Person or Persons have received the Sacrament (1) of the Lord's Supper within One Month next before any Bill exhibited for that Purpose, and also shall take the Oath of Supremacy, and the Oath of Allegiance, in the Parliament-House, before his or her Bill be Twice read: And for the better effecting of the Premises, Be it further enacted by the Authority aforesaid, That the Lord Chancellor of *England*, or Lord Keeper of the Great Seal for the Time being, if the Bill begin in the Upper House, and the Speaker of the Commons House of Parliament for the Time being, if the Bill begin there, shall have Authority at all Times during the Session of Parliament, to minister such Oath and Oaths, and to such Person and Persons, as by the true Intent of this Statute is to be ministred. This Act to take place from and after the End of this present Session of Parliament.

(1) The Provision for taking the Sacrament was dispensed with, as to Jews, by Statute 26 Geo. II. c. 26. This was the single Provision of the famous Jew Bill, which excited so great a ferment as endangering the Religion of the Country, that the first Act of the following Session was a Sacrifice to popular Clamour by its Repeal. The Alarm seems to have operated even upon the enlightened Mind of Sir Wm. Blackstone, who says, that it is not his Intention to revive the Controversy, for the Act lived only a few Months and was then repealed; therefore, Peace be now to its Manes.—1 Com. 375.

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No. 9.

12 & 13 William III. c. 2.—An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject.

SECTION 3.

[Among other Provisions in the Act of Settlement is the following:]

THAT after the said Limitation shall take Effect, as aforesaid, no Person born out of the Kingdoms of *England*, *Scotland*, or *Ireland*, or the Dominions thereunto belonging (although he be naturalized or made a Denizen, except such as are born of *English* Parents) shall be capable to be of the Privy Council, or a Member of either House of Parliament, or to enjoy any Office or Place of Trust, either civil or military, or to have any Grant of Lands or Tenements, from the Crown, to himself or to any other or others in Trust for him. 12 & 13 Wm. III. c. 2. § 3.

No. 10.

7 Ann, c. 5.—An Act for naturalizing Foreign Protestants.

Anne c. 5.

'WHEREAS the Increase of People is a Means of advancing the 'Wealth and Strength of a Nation; and whereas many 'Strangers of the Protestant or Reformed Religion out of a due 'Consideration of the happy Constitution of the Government of this 'Realm, would be induced to transport themselves and their Estates 'into this Kingdom, if they might be made Partakers of the Advan-'tages and Privileges which the natural-born Subjects thereof do 'enjoy; Be it enacted, &c.

"All Persons taking the Oaths, and making and subscribing the "Declaration appointed by 6 Annæ, c. 23, shall be deemed natural-"born Subjects. No Person to have the Benefit of this Act, unless "he have received the Sacrament, &c."

Children of natural born Subjects born abroad, to be deemed natural-born Subjects; explained by 4 G. II. c. 21.

III. And be it further enacted by the Authority aforesaid, That the Children of all natural-born Subjects born out of the Ligeance of her Majesty, her Heirs and Successors, shall be deemed, adjudged, and taken to be natural-born Subjects of this Kingdom, to all Intents, Constructions, and Purposes whatsoever.

This Act to extend to Ireland.

IV. And be it further enacted by the Authority aforesaid, That all Persons born out of the Ligeance of her Majesty, her Heirs or Successors, who shall qualify themselves in the Courts of *Chancery*, *Queen's Bench*, *Common Pleas*, or *Exchequer*, within the Kingdom of *Ireland*, or at some General Quarter-Sessions of the Peace, to be held for the County where he or they do or shall inhabit, reside, or settle within the said Kingdom, in like Manner as Persons are by this Act required to do within the Kingdom of *Great Britain*, all and every such Persons shall be deemed, adjudged, and taken to be her Majesty's natural-born Subjects of the said Kingdom of *Ireland*, to all Intents, Constructions, and Purposes, as if they, and every of them, had been, or were born within the said Kingdom of *Ireland*.

[Repealed by 10 Annæ, c. 5. Except what relates to the Children of her Majesty's natural-born Subjects, born out of her Majesty's Allegiance. Vide 1 Geo. I. Stat. 2 c. 29.]

No. 11.

10 Anne, c. 5.—An Act to repeal the Act of the seventh Year of her Majesty's Reign, intituled, *An Act for naturalizing Foreign Protestants* (except what relates to the Children of her Majesty's natural-born Subjects born out of her Majesty's Allegiance.)

Annæ, c. 5.

'WHEREAS an Act of Parliament was made and passed in the 'seventh Year of her Majesty's Reign, intitled, *An Act for* '*naturalizing Foreign Protestants*: And whereas divers Mischiefs 'and Inconveniencies have been found by Experience to follow from 'the same, to the Discouragement of the natural-born Subjects of 'this Kingdom, and to the Detriment of the Trade and Wealth 'thereof;' Be it therefore enacted by the Queen's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the before-mentioned Act, and all the Matters and Things therein contained (except so much of the said Act by which the Children of all natural-born Subjects born out of the Allegiance of her Majesty, her Heirs and Successors, are

to be deemed, adjudged, and taken to be natural-born Subjects of this Kingdom) shall be, and is hereby repealed, annulled, and made void, to all Intents and Purposes whatsoever; provided nevertheless, That such Repeal shall not in any Sort prejudice or impeach the Naturalization of any Persons who have been or shall be naturalized at any Time before the fourth Day of *February*, which shall be in the Year of our Lord one thousand seven hundred and eleven, pursuant to the Directions of the before-mentioned Act. No. 11. 7 Anne, c. 5.

No. 12.

1 Geo. I. Stat. 2.—An Act to explain the Act made in the twelfth Year of the Reign of King *William* the Third, intituled, *An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject.*

'WHEREAS by an Act of Parliament made in the twelfth Year 'of the Reign of our late Sovereign Lord King *William* the 'Third, intituled, *An Act for the further Limitation of the Crown, 'and better securing the Rights and Liberties of the Subject*, it is 'amongst other Things enacted, That from and after the Time that 'the further Limitation of the Crown by that Act should take Effect, 'no Person born out of the Kingdom of *England, Scotland*, or '*Ireland*, or the Dominions thereunto belonging, although he be 'naturalized or made a Denizen, except such as are born of *English* 'Parents, should be capable to be of the Privy Council, or a Member 'of either House of Parliament, or to enjoy any Office or Place of 'Trust, either Civil or Military, or to have any Grant of Lands, 'Tenements, or Hereditaments from the Crown, to himself or to any 'others in Trust for him: And whereas some Doubts have arisen 'concerning the Construction of the said Law;' Be it declared and enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lord's Spiritual and Temporal and Commons, in Parliament assembled, and by the Authority of the same, That it was not the Intent and Meaning of the said Act, that the said Clause, or any Thing therein contained, should extend nor shall the said Clause be construed, adjudged, or taken to extend to disable or incapacitate any Person, who at or before his Majesty's Accession to the Crown was naturalized, to be of the Privy-Council, or a Member of either House of Parliament, or to take or enjoy any Office or Place of Trust, either Civil or Military, or to take or have any Grant of Lands, Tenements or Hereditaments from the Crown, to himself, or any other in Trust for him.

12 & 13 W. III. c. 2.

No Person naturalized before his Majesty's Accession incapacitated to be a Privy Counsellor, or a Member of Parliament, or to have any Office of Trust, Grant of Lands, &c.

'II. And for the better preserving the said recited Clause in the said Act of the twelfth Year of the late King *William* the Third, entire and inviolable;' Be it further enacted by the Authority aforesaid, that no Person shall hereafter be naturalized, unless in the Bill exhibited for that Purpose there be a Clause or particular Words inserted to declare, that such Person shall not thereby be enabled to be of the Privy-Council, or a Member of either House of Parliament, or to take any Office or Place of Trust, either Civil or Military, or to have any Grant of Lands, Tenements, or Hereditaments from the Crown, to himself, or any other Person in trust for him; and that no Bill of Naturalization shall hereafter be received in either House of Parliament, unless such Clause or Words be first inserted or contained therein.

No [illegible] naturalized, unless the Bill [illegible] a disabling Clause inserted.

Nor shall Bill be received in either House of Parliament without such Clause. See 5 Bur. [illegible].

No. 13.

4 Geo. II. c. 21.—An Act to explain an Act made in the seventh Year of the Reign of her late Majesty Queen *Anne, For naturalizing Foreign Protestants*, which relates to the Children of the natural-born Subjects of the Crown of *England*, or of *Great Britain*.

7 Anne, c. 5. 'WHEREAS by an Act of Parliament made in the seventh Year 'of the Reign of her late Majesty Queen ANNE, intituled, '*An Act for naturalizing of Foreign Protestants*, it is, amongst 'other Things, enacted, That the Children of all natural-born Sub-'jects, born out of the Ligeance of her said late Majesty, her Heirs 'and Successors, should be deemed, adjudged and taken to be 'natural-born Subjects of this Kingdom to all Intents, Constructions, 'and Purposes whatsoever: And whereas in the tenth Year of her 'said late Majesty's Reign another Act was made and passed to repeal 'the said Act (except what related to the Children of her Majesty's 'natural-born Subjects, born out of her Majesty's Allegiance): And 'whereas some Doubts have arisen upon the Construction of the said 'recited Clause in the said Act of the seventh Year of her late 'Majesty's Reign:' Now for the explaining the said recited Clause in the said Act, relating to Children of natural-born Subjects, and to prevent any Disputes touching the true Intent and Meaning thereof, May it please your most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That all Children born out of the Ligeance of the Crown of *England*, or of *Great Britain*, or which shall hereafter be born out of such Ligeance, whose Fathers were or shall be natural-born Subjects of the Crown of *England*, or of *Great Britain*, at the Time of the Birth of such Children respectively, shall and may, by virtue of the said recited Clause in the said Act of the seventh Year of the Reign of her said late Majesty, and of this present Act, be adjudged and taken to be, and all such Children are hereby declared to be natural-born Subjects of the Crown of *Great Britain*, to all Intents, Constructions, and Purposes whatsoever.

[Margin notes: 10 Anne, c. 5. — Children of natural born Subjects born out of the Allegiance of the Crown, declared to be natural born. — 7 Anne, c. 5. § 3.]

Children of Parents attainted of Treason, II. Provided always, and be it further enacted and declared by the Authority aforesaid, That nothing in the said recited Act of the seventh Year of her said late Majesty's Reign, or in this present Act contained, did, doth, or shall extend, or ought to be construed, adjudged, or taken to extend, to make any Children born or to be born out of the Ligeance of the Crown of *England*, or of the Crown of *Great Britain*, whose Fathers at the Time of the Birth of such Children respectively were or shall be attainted of High Treason, by Judgment, Outlawry, or otherwise, either in this Kingdom or in *Ireland*, or whose Fathers at the Time of the Birth of such Children respectively, by any Law or Laws made in this Kingdom or in *Ireland*, were or shall be liable to the Penalties of High Treason or Felony, in case of their returning into this Kingdom or into *Ireland* without the Licence of his Majesty, his Heirs or Successors, or of any of his Majesty's Royal Predecessors, or whose Fathers at the Time of the Birth of such Children respectively were or shall be in the actual Service of any foreign Prince or State then in Enmity with the Crown of *England*, or of *Great Britain*, but that all such Children are, were and shall be and remain in the same State, Plight,

[Margin note: or in actual Service of foreign Princes in Enmity with the Crown, excepted.]

and Condition to all Intents, Constructions, and Purposes whatsoever, as they would have been in, if the said Act of the seventh Year of her said late Majesty's Reign, or this present Act, had never been made; any Thing herein, or in the said Act of the seventh Year of her said late Majesty's Reign contained to the contrary in any wise notwithstanding. No. 13. 4 Geo. II. c. 21.

III. Provided always, and be it further enacted by the Authority aforesaid, That if any Child, whose Father at the Time of the Birth of such Child was attainted of High Treason as aforesaid, or was liable to the Penalties of High Treason or Felony, in case of returning into this Kingdom or *Ireland* without Licence as aforesaid, or was in the actual Service of any foreign Prince or State then in Enmity with the Crown of *England*, or of *Great Britain* (other than and excepting always out of this Proviso all Children of such Persons who went out of *Ireland* in pursuance of the Articles of *Limerick*) hath come into *Great Britain* or *Ireland*, or any other of the Dominions belonging to the Crown of *Great Britain*, and hath continued to reside within *Great Britain* or *Ireland*, or other the Dominions aforesaid, for the Space of two Years, at any Time between the sixteenth Day of *November* in the Year of our Lord one thousand seven hundred and eight, and the twenty-fifth Day of *March* in the Year of our Lord one thousand seven hundred and thirty-one, and during such Residence hath professed the Protestant Religion; or if any Child whose Father at the Time of his or her Birth was within any of the Descriptions before-mentioned, hath come into *Great Britain* or *Ireland*, or any other of the Dominions belonging to the Crown of *Great Britain*, and professed the Protestant Religion, and died within *Great Britain* or *Ireland*, or any other of the Dominions aforesaid, at any Time between the said sixteenth Day of *November* in the Year of our Lord one thousand seven hundred and eight, and the said twenty-fifth Day of *March* in the Year of our Lord one thousand seven hundred and thirty-one; or if any Child, whose Father at the Time of his or her Birth was within any of the Descriptions before-mentioned, hath been and continued in the actual Possession or Receipt of the Rents and Profits of any Lands, Tenements, or Hereditaments in *Great Britain* or *Ireland*, for the Space of one whole Year, at any Time between the said sixteenth Day of *November* in the Year of our Lord one thousand seven hundred and eight, and the said twenty-fifth Day of *March* in the Year of our Lord one thousand seven hundred and thirty-one, or hath *bona fide*, and for good and valuable Consideration, sold, conveyed or settled any Lands, Tenements, or Hereditaments in *Great Britain* or *Ireland*, and any Person claiming Title thereto, under such Sale, Conveyance or Settlement, hath been and continued in the actual Possession or Receipt of the Rents and Profits thereof for the Space of six Months, between the said sixteenth Day of *November*, in the Year of our Lord one thousand seven hundred and eight, and the said twenty-fifth Day of *March* in the Year of our Lord one thousand seven hundred and thirty-one, every such Child shall be deemed, adjudged and taken to be and to have been a natural-born Subject of the Crown of *England*, or of the Crown of *Great Britain*, to all Intents, Constructions, and Purposes whatsoever; any Thing herein contained to the contrary thereof in any wise notwithstanding. Proviso.

No. 14.

13 Geo. II. c. 7.—An Act for naturalizing Foreign Protestants, and others therein mentioned, as are settled, or shall settle, in any of his Majesty's Colonies in *America.*

13 Geo. II. c. 7. 'WHEREAS the Increase of People is a Means of advancing the 'Wealth and Strength of any Nation or Country: And whereas 'many Foreigners and Strangers, from the Lenity of our Government, 'the Purity of our Religion, the Benefit of our Laws, the Advantages 'of our Trade, and the Security of our Property, might be induced 'to come and settle in some of his Majesty's Colonies in *America*, 'if they were made Partakers of the Advantages and Privileges which 'the natural-born Subjects of this Realm do enjoy;' Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the first Day of *June* in the Year of our Lord one thousand seven hundred and forty, all Persons born out of the Ligeance of his Majesty, his Heirs or Successors, who have inhabited and resided, or shall inhabit or reside, for the Space of seven Years or more, in any of his Majesty's Colonies in *America*, and shall not have been absent out of some of the said Colonies for a longer Space than two Months at any one Time during the said seven Years, and shall take and subscribe the Oaths, and make, repeat, and subscribe the Declaration appointed by an Act made in the first Year of the Reign of his late Majesty King George the First, intituled, *An Act for the further Security of his Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess* Sophia, *being Protestants; and for extinguishing the Hopes of the pretended Prince of* Wales, *his open and secret Abettors*; or, being of the People called *Quakers*, shall make and subscribe the Declaration of Fidelity, and take and affirm the Effect of the Abjuration Oath, appointed and prescribed by an Act made in the eighth Year of the Reign of his said late Majesty, intituled, *An Act for granting the People called* Quakers, *such Forms of Affirmation or Declaration, as may remove the Difficulties which many of them lie under*; and also make and subscribe the Profession of his Christian Belief, appointed and prescribed by an Act made in the first Year of the Reign of their late Majesties King William and Queen Mary, intituled, *An Act for exempting their Majesties Protestant Subjects from the Penalties of certain Laws*; before the Chief Judge, or other Judge of the Colony wherein such Persons respectively have so inhabited and resided, or shall so inhabit or reside, shall be deemed, adjudged, and taken to be his Majesty's natural-born Subjects of this Kingdom, to all Intents, Constructions, and Purposes, as if they, and every of them, had been or were born within this Kingdom; which said Oath or Affirmation and Subscription of the said Declarations respectively, the Chief Judge or other Judge of every of the said respective Colonies is hereby enabled and impowered to administer and take; and the taking and subscribing of every such Oaths or Affirmation, and the making, repeating, and subscribing of every such Declaration, shall be before such Chief Judge or other Judge, in open Court, between the Hours of nine and twelve in the Forenoon; and shall be entered in the same Court, and also in the Secretary's Office of the Colony wherein such Person shall so inhabit and reside: And every Chief Judge or other Judges of every respective Colony, before whom such Oaths or Affirmation shall be taken, and every such Declaration shall be made, repeated,

Foreigners living seven Years in any of our Colonies to be deemed Natives, on taking the Oaths, &c.

Quakers to subscribe the Declaration of Fidelity, &c.

and subscribed as aforesaid, is hereby required to make a due and proper Entry thereof in a Book to be kept for that Purpose in the said Court; for the doing whereof two Shillings and no more shall be paid at each respective Place, under the Penalty and Forfeiture of ten Pounds of lawful Money of *Great Britain* for every Neglect or Omission: And in like Manner every Secretary of the Colony wherein any Person shall so take the said Oaths or Affirmation, and make, repeat, and subscribe the said Declarations respectively, as aforesaid, is hereby required to make a due and proper Entry thereof in a Book to be kept for that Purpose in his Office, upon Notification thereof to him by the Chief Judge or other Judge of the same Colony, under the like Penalty and Forfeiture for every such Neglect or Omission. No. 14. 13 Geo. II. c. 7.

II. Provided always, and be it enacted by the Authority aforesaid, That no Person, of what Quality, Condition, or Place soever, other than and except such of the People called *Quakers*, as shall qualify themselves and be naturalized by the Ways and Means herein before-mentioned, or such who profess the *Jewish* Religion, shall be naturalized by virtue of this Act, unless such Person shall have received the Sacrament of the Lord's Supper in some Protestant and Reformed Congregation within this Kingdom of *Great Britain*, or within some of the said Colonies in *America*, within three Months next before his taking and subscribing the said Oaths, and making, repeating, and subscribing the said Declaration; and shall, at the Time of his taking and subscribing the said Oaths, and making, repeating, and subscribing the said Declaration, produce a Certificate signed by the Person administring the said Sacrament, and attested by two credible Witnesses, whereof an Entry shall be made in the Secretary's Office of the Colony, wherein such Person shall so inhabit and reside, as also in the Court where the said Oaths shall be so taken as aforesaid, without any Fee or Reward.

Each qualified Person to receive the Sacrament, except Quakers and Jews. 20 Geo. II. c. 44.

'III. And whereas the following Words are contained in the 'latter Part of the Oath of Abjuration, *Videlicet, (upon the true 'Faith of a Christian,)* And whereas the People professing the *Jewish* 'Religion may thereby be prevented from receiving the Benefit of this 'Act;' Be it further enacted by the Authority aforesaid, That whenever any Person professing the *Jewish* Religion shall present himself to take the said Oath of Abjuration in pursuance of this Act, the said Words *(upon the true Faith of a Christian)* shall be omitted out of the said Oath in administring the same to such Person, and the taking and subscribing the said Oath by such Person professing the *Jewish* Religion, without the Words aforesaid, and the other Oaths appointed by the said Act in like Manner as *Jews* were permitted to take the Oath of Abjuration, by an Act made in the tenth Year of the Reign of his late Majesty King George the First, intituled, *An Act for explaining and amending an Act of the last Session of Parliament; intituled,* An Act to oblige all Persons, being Papists, in that Part of *Great Britain* called *Scotland*, and all Persons in *Great Britain*, refusing or neglecting to take the Oaths appointed for the Security of his Majesty's Person and Government, by several Acts herein mentioned, to register their Names and real Estates; *and for enlarging the Time for taking the said Oaths, and making such Registers, and for allowing further Time for the Inrolment of Deeds or Wills made by Papists, which have been omitted to be enrolled pursuant to an Act of the third Year of his Majesty's Reign; and also for giving Relief to Protestant Lessees,* shall be deemed a sufficient taking of the said Oaths, in order to intitle such Person to the Benefit of being naturalized by virtue of this Act.

Jews taking the Oaths, may omit some Expressions.

IV. And be it further enacted by the Authority aforesaid, That a Testimonial or Certificate under the Seal of any of the said Colonies, Certificate

No. 14. 13 Geo. II. c. 7. of any Persons having resided and inhabited for the Space of seven Years or more as aforesaid within the said Colonies or some of them, to be specified in such Certificate, together with the particular Time of Residence in each of such respective Colonies (whereof the Colony under the Seal of which such Certificate shall be given to be One,) and of his having taken and subscribed the said Oaths, and of his having made, repeated, and subscribed the said Declaration; and in case of a *Quaker*, of his having made and subscribed the Declaration of Fidelity, and of his having taken and affirmed the Effect of the Abjuration Oath as aforesaid; and in the case of a Person professing the *Jewish* Religion, of his having taken the Oath of Abjuration as aforesaid, within the same Colony, under the Seal whereof such Certificate shall be given as aforesaid, shall be deemed and taken to be a sufficient Testimony and Proof thereof, and of his being a natural-born Subject of *Great Britain*, to all Intents and Purposes whatsoever, and as such shall be allowed in every Court within the Kingdoms of *Great Britain* and *Ireland*, and also in the said Colonies in *America*.

This Clause is extended by 20 Geo. II. c. 44.

Secretary of the Colony to send over Lists, to be registered in England;

V. And be it further enacted by the Authority aforesaid, That every Secretary of the said respective Colonies for the Time being, shall and is hereby directed and required at the End of every Year, to be computed from the said first Day of *June* in the Year of our Lord one thousand seven hundred and forty, to transmit and send over to the Office of the Commissioners for Trade and Plantations kept in the City of *London* or *Westminster*, a true and perfect List of the Names of all and every Person or Persons who have in that Year intitled themselves to the Benefit of this Act, under the Penalty and Forfeiture of fifty Pounds of lawful Money of *Great Britain* for every Neglect or Omission: All which said Lists so transmitted and sent over, shall from Year to Year be duly and regularly entered by the said Commissioners, in a Book or Books to be had and kept for that Purpose in the said Office, for public View and Inspection, as Occasion shall require.

on Penalty of 50*l*.

Proviso. Extended to the Unitas Fratrum by 20 Geo. II. c 44. See farther 22 Geo. II. c 45, & 19 Geo. II. c 5, enabling his Majesty to grant Commissions to a certain Number of foreign Protestants to act in America.

VI. Provided always, and it is hereby further enacted, That no Person who shall become a natural-born Subject of this Kingdom by virtue of this Act, shall be of the Privy Council, or a Member of either House of Parliament, or capable of taking, having, or enjoying any Office or Place of Trust within the Kingdoms of *Great Britain* or *Ireland*, either Civil or Military, or of having, accepting, or taking any Grant from the Crown to himself, or to any other in Trust for him, of any Lands, Tenements, or Hereditaments within the Kingdoms of *Great Britain* or *Ireland*; any Thing herein before contained to the contrary thereof in any wise notwithstanding.

No. 15.

20 Geo. II. c. 44.—An Act to extend the Provisions of an Act made in the thirteenth Year of his present Majesty's Reign, intituled, *An Act for naturalizing such foreign Protestants, and others therein mentioned, as are settled, or shall settle in any of his Majesty's Colonies, in* America, to other foreign Protestants who conscientiously scruple the taking of an Oath.

WHEREAS by an Act made in the thirteenth Year of his present Majesty's Reign, intituled, *An Act for naturalizing such foreign Protestants, and others therein mentioned, as are settled, or shall settle in any of his Majesty's Colonies in* America;

'it was enacted, That from and after the first Day of *June* in the 'Year of our Lord one thousand seven hundred and forty, all 'Persons born out of the Ligeance of his Majesty, his Heirs, or 'Successors, who had inhabited and resided, or should inhabit and 'reside for the Space of seven Years, or more, in any of his Majesty's 'Colonies in *America*, and should not have been absent out of some 'of the said Colonies for a longer Space than two Months, at any one 'Time during the said seven Years, and should take and subscribe 'the Oaths, and make, repeat, and subscribe the Declaration 'appointed by an Act made in the first Year of the Reign of his late 'Majesty King GEORGE the First, intituled, *An Act for the further 'Security of his Majesty's Person and Government, and the Suc-'cession of the Crown in the Heirs of the late Princess* SOPHIA, '*being Protestants; and for extinguishing the Hopes of the pre-'tended Prince of* Wales, *his open and secret Abettors*; or being 'of the People called *Quakers*, should make and subscribe the 'Declaration of Fidelity, and take and affirm the Effect of the 'Abjuration Oath, appointed and prescribed by an Act made in the 'eighth Year of the Reign of his said late Majesty, intituled, *An Act 'for granting the People called* Quakers, *such Forms of Affirmation 'or Declaration, as may remove the Difficulties which many of 'them lie under*; and also make and subscribe the Profession of his 'Christian Belief, appointed and prescribed by an Act made in the 'first Year of the Reign of their late Majesties King WILLIAM and 'Queen MARY, intituled, *An Act for exempting their Majesties' 'Protestant Subjects from the Penalties of certain Laws*, before the 'Chief Judge, or other Judge of the Colony wherein such Persons 'respectively had so inhabited and resided, or shall so inhabit and 'reside, should be deemed, adjudged and taken to be his Majesty's 'natural-born Subjects of this Kingdom, to all Intents, Construc-'tions, and Purposes, as if they and every one of them, had been or 'were born within this Kingdom: And whereas many of the People 'of the Congregation called the *Moravian* Brethren, and other foreign 'Protestants, not *Quakers*, who conscientiously scruple the taking of 'an Oath, are settled in his Majesty's Colonies in *America*, and 'demean themselves there as a sober, quiet, and industrious People, 'and many others of the like Persuasion are desirous to transport 'themselves thither; and if the Benefit of the said Act, made in the 'thirteenth Year of his present Majesty's Reign, were extended to 'them, they who are now there would thereby be encouraged to 'continue their Residence in his Majesty's Colonies, and others would 'resort thither in greater Numbers, whereby the said Colonies would 'be improved, their Strength increased, and their Trade extended;' Be it therefore enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the twenty-fifth Day of *December* one thousand seven hundred and forty-seven, all foreign Protestants, who conscientiously scruple the taking of an Oath, and who are born out of the Ligeance of his Majesty, his Heirs or Successors, who have inhabited and resided, or shall inhabit and reside, for the Space of seven Years or more, in any of his Majesty's Colonies in *America*, and shall not have been absent out of some of the said Colonies for a longer Space than two Months at any one Time during the said seven Years, and shall make and subscribe the Declaration of Fidelity, and take and affirm the Effect of the Abjura-tion Oath, appointed and prescribed by the said recited Act, made in the eighth Year of the Reign of his late Majesty King GEORGE the First, and also make and subscribe the Profession of his Christian

No. 15.
20 Geo. II. c. 44.

1 Geo. I. c. 13.

8 Geo. III. c. 1[?].

1 W. & M. st. 1. c. 18.

Foreign Protestants Residents in America seven Years, who scruple an Oath, upon making and subscribing the Affirmation of Fidelity and Declaration;

No. 15.
20 Geo. II. c. 44.

Belief, appointed and prescribed by the said recited Act, made in the first Year of the Reign of their late Majesties King WILLIAM and Queen MARY, before the Chief Judge or other Judge of the Colony wherein such Persons respectively have so inhabited and resided, or shall so inhabit and reside, shall be deemed, adjudged, and taken to be his Majesty's natural-born Subjects of this Kingdom, to all Intents, Constructions, and Purposes, as if they and every of them had been or were born within this Kingdom; which said Affirmation and Subscription of the said Declaration, the said Chief or other Judge of every of the said respective Colonies, is hereby enabled and impowered to administer and take; and the taking of every such Affirmation, and the making and subscribing of every such Declaration, shall be in such Manner and Place, and at such Times and Hours, and such Entries made thereof, and for the same Fees, and under the same Penalties, as in the said recited Act of the thirteenth Year of his Majesty's Reign are mentioned; and Lists of the Persons who shall take the Benefit of this Act, shall be transmitted to the Commissioners of Trade and Plantations, in like Manner, and under the same Penalties, as Lists of the Persons taking the Benefit of the said Act are thereby directed to be transmitted.

to be deemed natural born Subjects.

II. Provided always, and be it enacted by the Authority aforesaid, That no Person shall be naturalized by virtue of this Act, unless such Person shall have received the Sacrament of the Lord's Supper, in some Protestant or Reformed Congregation, within some of the said Colonies in *America*, within three Months next before his taking such Affirmation, and making and subscribing such Declaration, and shall at the Time of his taking such Affirmation and making and subscribing such Declaration, produce a Certificate, signed by the Person administring the said Sacrament, and attested by two credible Witnesses, whereof an Entry shall be made in the Secretary's Office of the Colony wherein such Person shall so inhabit and reside, as also in the Court where the said Affirmation shall be so taken as aforesaid, without any Fee or Reward.

Persons to qualify themselves by taking the Sacrament.

Certificate and Entry thereof to be made.

III. And be it further enacted by the Authority aforesaid, That the Provisions contained in the said Act, made in the thirteenth Year of his present Majesty's Reign, with regard to Certificates of Residence, and of having made and subscribed the said Declaration, and taken the said Affirmation, and as to such Certificates being made Evidence in the Courts of *Great Britain* and *Ireland*, and also in the said Colonies, and all other the Benefits of the said Act, shall extend to foreign Protestants, who conscientiously scruple the taking of an Oath, and who shall be qualified as aforesaid.

Provisions of Act 13 Geo. II. with regard to Certificates, &c. extended to such foreign Protestants.

IV. Provided always, That the said foreign Protestants shall enjoy the Privileges of natural-born Subjects, and all the Benefits of this Act, and the said Act of the thirteenth Year of his Majesty's Reign.

Privileges of natural-born Subjects, &c.

V. Provided always, and be it hereby further enacted, That no Person who shall become a natural-born Subject of this Kingdom, by virtue of this Act, shall be of the Privy Council, or a Member of either House of Parliament, or capable of taking, having, or enjoying any Office or Place of Trust within the Kingdoms of *Great Britain* or *Ireland*, either Civil or Military, or of having, accepting, or taking any Grant from the Crown to himself, or to any other in Trust for him, of any Lands, Tenements, or Hereditaments, within the Kingdoms of *Great Britain* or *Ireland*; any Thing herein before contained to the contrary thereof in any wise notwithstanding.

Restrictions.

VI. Provided also, and it is hereby further enacted by the Authority aforesaid, That nothing in this Act, or in the said recited Act of the thirteenth Year of his Majesty's Reign contained, shall

Persons excluded from this or 13 Geo. II.

extend, or be construed to extend to naturalize any Person or Persons whatsoever, who by virtue of an Act made in the fourth Year of his Majesty's Reign, (intituled, *An Act to explain a Clause in an Act made in the seventh Year of the Reign of her late Majesty Queen* ANNE, *for naturalizing foreign Protestants, which relates to the Children of natural-born Subjects of the Crown of* England, *or of* Great Britain) are declared and enacted not to be intitled to the Benefit of the said Act of the seventh Year of her said late Majesty's Reign, but that all such Persons shall be and remain in the same State, Plight and Condition, to all Intents, Constructions, and Purposes whatsoever, as they would have been in, if the said recited Act of the thirteenth Year of his Majesty's Reign, or this Act, had never been made; any Thing in this Act, or in the said recited Act of the thirteenth Year of his Majesty's Reign contained to the contrary in any wise notwithstanding. No. 15. 13 Geo. II. c. 44. 4 Geo. II c. 2

No. 16.

2 Geo. III. c. 25.—An Act for Naturalizing such foreign Protestants as have served, or shall serve for the Time therein mentioned, as Officers or Soldiers in his Majesty's Royal *American* Regiment, or as Engineers in *America*.

'WHEREAS by an Act made in the thirteenth Year of the 'Reign of his late Majesty King GEORGE the Second, in'tituled, *An Act for naturalizing such foreign Protestants, and others therein mentioned, as are settled or shall settle in any of his Majesty's Colonies in* America; all Persons born out of the Ligeance 'of his Majesty, his Heirs, or Successors, who shall have inhabited 'and resided, or shall inhabit or reside, for the Space of seven Years, 'or more, in any of his Majesty's Colonies in *America*, or shall not 'have been absent out of the said Colonies, for a longer Space than 'two Months at any one Time during the said seven Years, are, upon 'the Conditions prescribed by the said Act, naturalized and made 'Partakers of all the Benefits and Privileges which the natural-born 'Subjects of this Realm do enjoy, other than such as are specified in 'a Proviso in the said Act contained. And whereas Commissions 'have been granted to a certain number of foreign Protestants in '*America*, in pursuance of a Power given by a subsequent Act of 'the twenty-ninth Year of the Reign of his late Majesty King 'GEORGE the Second, intituled, *An Act to enable his Majesty to grant Commissions to a certain Number of foreign Protestants, who have served abroad as Officers or Engineers, to act and rank as Officers or Engineers in* America *only, under certain Restrictions and Qualifications*; which said Officers have been very useful to 'his Majesty's Service, by the raising of a great Number of Men, and 'training them to discipline as Soldiers: And whereas several of the 'said Officers, since the passing of the above recited Acts, have 'purchased Estates in *America*, by which, as well as by their faithful 'Services, they have given the strongest Assurances of their Attach'ment and Fidelity to his Majesty's Government: And whereas it is 'just to reward the past Services of the said Officers and Soldiers, and 'to give Encouragement for their future good Conduct; and it is 'likewise expedient to add inducements to such foreign Protestants 'as have settled, or may hereafter settle, in *America*, to engage in his 'Majesty's Service;' Be it therefore enacted by the King's most

2 Geo. III. c. 25. Preamble reciting Act 13 Geo. II. c. 7 and 29 Geo. II. c. 5.

No. 10.
2 Geo. III c. 25

excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all such foreign Protestants, as well Officers as Soldiers, who have served or shall hereafter serve, in the Royal *American* Regiment, or as Engineers in *America*, for the Space of two Years, and shall take and subscribe the Oaths, and make, repeat, and subscribe the Declaration appointed by an Act made in the first Year of the Reign of his Majesty King George the First, intituled, *An Act for the further Security of his Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess* Sophia, *being Protestants, and for extinguishing the Hopes of the pretended Prince of* Wales, *his open and secret Abettors*, and shall, at the Time of subscribing the said Oaths, and making, repeating, and subscribing the said Declaration, produce Certificates, signed in Manner directed by the above recited Act of the thirteenth of his late Majesty, of their having received the Sacrament in some Protestant and Reformed Congregation within the Kingdom of *Great Britain*, or within some of the said Colonies in *America*, within six Months before that Time, shall be deemed, adjudged, and taken to be, his Majesty's natural-born Subjects of this Kingdom, to all Intents, Constructions, and Purposes, as if they, and every of them, had been or were born within this Kingdom, and that no Estates, of what Nature or Kind soever, purchased by them or any of them, in any of his Majesty's Colonies in *America* since the passing of the above recited Act of the twenty ninth Year of the Reign of his said late Majesty, shall be liable to be seized into the Hands of his Majesty, his Heirs, or Successors, or their Titles thereto be otherwise impeached by reason of their having been Aliens at the Time of their making the said Purchases, the above recited Acts, or any other Statute, Law, or Thing whatsoever to the contrary notwithstanding.

II. Provided always, and be it enacted by the Authority aforesaid, That Nothing in this Act contained shall extend, or be construed to extend, to naturalize any Person or Persons whatsoever, who, by virtue of an Act made in the fourth Year of the Reign of his late Majesty King George the First,* (intituled *An Act to explain a Clause in an Act made in the seventh Year of the Reign of her late Majesty Queen* Anne, *for naturalizing foreign Protestants, which relates to the Children of natural-born Subjects of the Crown of* England, *or of* Great Britain) are declared and enacted not to be intitled to the Benefit of the said Act of the seventh Year of her said Majesty's Reign, but that all such Persons shall be and remain in the same State, Plight, and Condition, to all Intents, Constructions, and Purposes whatsoever, as they would have been in if this Act had never been made, any Thing herein contained to the contrary in any wise notwithstanding.

* So in Orig. but the Act referred to is the 4th of Geo II

III. Provided also, and be it further enacted, That no Person who shall become a natural-born Subject of this Kingdom, by virtue of this Act, shall be thereby enabled to be of the Privy Council, or a Member of either House of Parliament, or to be capable of taking, having, or enjoying, any Office, or Place of Trust within the Kingdom of *Great Britain* or *Ireland*, either Civil or Military; or of having, accepting, or taking any Grant from the Crown to himself, or to any other, in Trust for him, of any Lands, Tenements, or Hereditaments, within the Kingdoms aforesaid; any Thing herein contained to the contrary thereof in any wise notwithstanding.

No. 17.

13 Geo. III. c. 21.—An Act to extend the Provisions of an Act, made in the fourth Year of the Reign of his late Majesty King George the Second, intituled, ***An Act to explain a Clause in an Act made in the seventh Year of the Reign of her late Majesty Queen*** **Anne,** ***for naturalizing foreign Protestants, which relates to the Children of the natural-born Subjects of the Crown of*** **England,** ***or of*** **Great Britain,** ***to the Children of such Children.***

'WHEREAS divers natural-born Subjects of *Great Britain*, who 'profess and exercise the Protestant Religion, through various 'lawful Causes, especially for the better carrying on of Commerce, 'have been, and are, obliged to reside in several trading Cities and 'other Foreign Places, where they have contracted Marriages, and 'brought up Families: And whereas it is equally just and expedient 'that the Kingdom should not be deprived of such Subjects, nor lose 'the Benefit of the Wealth that they have acquired; and therefore 'that not only the Children of such natural-born Subjects, but their 'Children also, should continue under the Allegiance of his Majesty, 'and be entitled to come into this Kingdom, and to bring hither and 'realize, or otherwise employ, their Capital; but no Provision hath 'hitherto been made to extend farther than to the Children born out 'of the Ligeance of his Majesty, whose Fathers were natural-born 'Subjects of the Crown of *England*, or of *Great Britain*:' May it therefore please your most Excellent Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all Persons born, or who hereafter shall be born, out of the Ligeance of the Crown of *England*, or of *Great Britain*, whose Fathers were or shall be, by virtue of a Statute made in the fourth Year of King George the Second, to explain a Clause in an Act made in the seventh Year of the Reign of her Majesty Queen Anne, for naturalizing foreign Protestants, which relates to the natural-born Subjects of the Crown of *England*, or of *Great Britain*, intitled to all the Rights and Privileges of natural-born Subjects of the Crown of *England*, or of *Great Britain*, shall and may be adjudged and taken to be, and are hereby declared and enacted to be, natural-born Subjects of the Crown of *Great Britain*, to all Intents, Constructions, and Purposes whatsoever, as if he and they had been or were born in this Kingdom; any Thing contained in an Act of the twelfth Year of the Reign of King William the Third, intituled, *An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject*, to the contrary in anywise notwithstanding. 13 Geo. III. c. 21

II. Provided always, and be it enacted and declared by the Authority aforesaid, That nothing in this present Act contained shall extend, or be construed, adjudged, or taken to extend, to make any Persons born, or to be born, out of the Ligeance of the Crown of *England*, or of the Crown of *Great Britain*, to be natural-born Subjects of the Crown of *Great Britain*, contrary to all or any of the Provisoes, Exceptions, Limitations, and Restrictions, contained in the aforesaid Act, made in the fourth Year of the Reign of his said late Majesty, or to repeal, abridge, or alter the same; but all such Provisoes, &c. of 4 Geo. II. not repealed by this Act.

No. 17. 13 Geo. III. c. 21. Clauses shall be, and remain in the same State, Plight, and Condition, to all Intents, Constructions, and Purposes whatsoever, as they would have been if this present Act had never been made.

Not to abridge or alter 5 Geo. I. III. Provided also, and be it further enacted by the Authority aforesaid, That nothing in this present Act contained shall extend, or be construed, adjudged, or taken to repeal, abridge, or any ways alter an Act made in the fifth Year of the Reign of his late Majesty King George the First, intituled, *An Act to prevent the Inconveniencies arising from seducing Artificers in the Manufactures of* Great Britain, *into foreign Parts*; nor to repeal, abridge, or any ways alter any Law, Statute, Custom, or Usage whatsoever, now in Force, concerning Aliens, Duties, Customs, and Impositions, nor to cause any Privilege, Exemption, or Abatement relating thereto, in favour of any Person naturalized by virtue of this Act, unless such Person shall come into this Realm, and there inhabit and reside, and shall take and subscribe the Oaths, and make, repeat, and subscribe the Declaration appointed by any Act made in the first Year of the Reign of his late Majesty King George the First, intituled, *An Act for the further Security of his Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess* Sophia, *being Protestants, and for extinguishing the Hopes of the pretended Prince of* Wales, *and his open and secret Abettors*, in such Manner and Form, and at such Place and Places as are in and by the said Act directed, and also receive the Sacrament of the Lord's Supper, according to the Usage of the Church of *England*, or in some Protestant or Reformed Congregation within this Kingdom of *Great Britain*, within three Months before their taking the Oaths in the said Act mentioned; and shall, at the Time and Place of taking and subscribing the said Oaths, and of making, repeating, and subscribing the said Declaration, produce a Certificate signed by the Person administring the said Sacrament, and attested by two credible Witnesses, whereof an Entry shall be made of Record in the Court and Courts respectively wherein such Oaths shall have been taken and subscribed, without any Fee or Reward.

Not to defeat any Right vested in another Person on the last Day of the Session. IV. Provided always, and be it further enacted by the Authority aforesaid, That no Person shall be enabled hereby to defeat any Estate, Right, or Interest, which upon the last Day of this Session shall be lawfully vested in any other Person, or to claim or demand any Estate or Interest, which shall hereafter accrue, unless such Claim or Demand be made within five Years next after the same shall accrue.

No. 18.

14 Geo. III. c. 84.—An Act to prevent certain Inconveniencies that may happen by Bills of Naturalization.

14 Geo. III. c. 84. 'WHEREAS it hath been found that many Persons, born out 'of the Allegiance of the Crown of *Great Britain*, obtain 'Bills of Naturalization for the Purpose of availing themselves in 'foreign Countries of the Immunities and Indulgences belonging to 'his Majesty's trading Subjects, by Treaties, or otherwise; and in 'order to apply the said Immunities and Indulgences to promote the 'Trade of the Country to which the Persons so naturalized originally 'belonged, and not with any design of fixing their Residence in *Great* '*Britain*, or of becoming useful Subjects thereof: And whereas it is 'neither just nor expedient to permit such Abuses of the true Intent 'of Naturalization;' may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty,

by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That no Person shall hereafter be naturalized, unless in the Bill exhibited for that Purpose there shall be a Clause or Proviso inserted to declare that such Person shall not thereby obtain, or become intitled to claim, within any foreign Country, any of the Immunities or Indulgences in Trade which are or may be enjoyed or claimed therein by natural-born *British* Subjects, by virtue of any Treaty, or otherwise, unless such Person shall have inhabited and resided within *Great Britain*, or the Dominions thereunto belonging, for the Space of seven Years, subsequent to the first Day of the Session of Parliament in which the said Bill of Naturalization shall have passed, and shall not have been absent out of the same for a longer Space than two Months, at any one Time, during the said seven Years; and that no Bill of Naturalization shall hereafter be received, in either House of Parliament, unless such Clause or Proviso be first inserted or contained therein.

No. 18.
14 Geo. III. c. 84.

Persons how to be naturalized hereafter.

PART I. CLASS II.

STATUTES RELATING TO THE CLERGY.

[The Statutes included in this Class comprize those which relate to Residence, and the Prohibition of exercising Trades—to Simony—to Ordination—the Uniformity of public Worship—the Presentation to Benefices—the Stipends of Curates—the Establishment and Regulation of Queen Anne's Bounty—the Erection of Glebe Houses—the Power of making Donations for the Benefit of the Church—the Union of Churches—and the Keeping of Registers.

The Statutes relating to the Convocation—to the obtaining of Provisions from Rome previous to the Reformation—to the Alterations in the Law established by the Reformation, including the Dissolution of Monasteries—and to the Revenues of Tenths and First-fruits, otherwise than as connected with Queen Anne's Bounty are not included in the Collection

The Statutes respecting Tithes will form a particular Class under Part IV. with the exception of those which particularly concern the Functions of Justices of Peace, and which will be inserted under the Article "Tithes," in Part VI.

The Statutes respecting Leases, by spiritual Persons, will form a distinct Class in Part II. Those which relate to the Exemption of Clergymen in certain Cases from Arrest, will be inserted in Part IV. The Statutes relating to the Benefit of Clergy, in criminal Cases, are more immediately applicable to Part V. and so far as regards the existing Law, have no peculiar Relation to spiritual Persons, except that they are exclusively entitled to the Benefit of Clergy a second Time.

Any Statutes respecting Papists and Dissenters, contained in this Collection, will be found in Parts V. & VI—Those respecting the Penalties for not going to Church, and the Profanation of the Lord's Day, in Part VI.

It has not been thought material to include in the Collection the Statute 35 Ed. I. *Ne Rector prosternet Arbores in Cœmetario,* which prohibits the cutting of Trees in Church-yards, except for the Repair of the Church or Chancel—the Statute 9 Ed II. Stat. 1, *De Diversis Libertatibus Clero concessis*—the Statute *for the Clergy,* 14 Ed. III. Stat. 4, which does not contain any Provisions applicable to the Copies above mentioned, as forming the Subject of the present Class—the Statute *for the Clergy,* 2 Ed. III Stat. 3, which contains Provisions against wrongful Presentations by the Crown—the Statute 15 Richard II. c 6, *that in Appropriation of Churches there shall be Provisions made for the Poor and a Vicar*—or any of the ancient Statutes respecting Heresy.]

No. 1.

21 Henry VIII. c. 13.—Spiritual Persons abridged from having Pluralities of Livings, and from taking of Ferms, &c. (1)

21 H. VIII. c. 13
The [illegible] Benefits ensuing the Performance of this Statute. Sivil 12 Hob. 157 2 Roll 486. 3 Leon. 122.

'FOR the more quiet and virtuous Increase and Maintenance of 'divine Service, the preaching and teaching the Word of God, 'with godly and good Example given, the better Discharge of 'Curates, the Maintenance of Hospitality, the Relief of poor People, 'the Increase of Devotion, and good Opinion of the Lay-fee toward 'the spiritual Persons:' Be it enacted, ordained, and established by

(1) See several Alterations of the Provisions of this Act by Stat. 43, Geo. III. c. 84, post No. 27.

No. 1.
21 H. VIII. c. 13.

the King our Sovereign Lord, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That no spiritual Persons, secular or regular, of what Degree soever he or they be, shall from henceforth take to ferm to himself, or to any Person or Persons to his Use, of the Lease or Grant of the King our Sovereign Lord, nor of any other Person or Persons, by Letters Patents, Indentures, Writings, by Words or otherwise, by any Manner of Means, any Manors, Lands, Tenements, or other Hereditaments for Term of Life, for Term of Years, or at Will, upon Pain to forfeit Ten Pounds for every Month that he, or any other to his Use, shall occupy any such Ferm, by reason of any such Lease or Grant hereafter to be made; the One Half of which Forfeiture to be to the King our Sovereign Lord, and the other Half thereof to every such Person that will sue for the same by orignal Writ, Bill, or Plaint of Debt, or by any Information in any of the King's Courts; in which Action and Suit no Wager of Law shall be admitted for the Defendant, nor any Essoin or Protection allowed.

No spiritual Person shall take any Lands to ferm.
2 Bulstr. 18.
1 Lutw. 134.
See 1 Bur. 545.

II. And be it also enacted by the Authority aforesaid, that all and every such spiritual Person or Persons which now have, or occupy in Ferm, by themselves, or by any other to their Use, any Manors, Lands, Tenements, or Hereditaments, of the Lease or Grant of the King our Sovereign Lord, or any other Person or Persons, for Term of Life, or for Years, or at Will, by any Writing or otherwise, or that now have any annual Rents, or other annual Advantage, or Profit, by Occasion or Colour of any such Lease or Ferm, shall clearly bargain, sell, give, or grant away on this Side the Feast of St. *Michael* the Archangel next coming, to any such lay Person or Persons, as they will at their own Nominations and Appointment, all such Lease, Term, Interest, and Profit, as any such spiritual Person, or other to his Use, now hath or have, in or by reason of any such Ferm; so that in no wise any such spiritual Person or Persons at any Time after the same Feast, by themselves, or any other to their Use, by any Manner of Means, Fraud, or Male Engine, shall have, use, or occupy in Ferm, any Manors, Lands, Tenements, or Hereditaments, of the Demise, Lease, or Grant of any Person or Persons heretofore made, or hereafter to be made, to themselves, or to any other to their Uses; nor from the said Feast shall take any annual Rent, or other annual Advantage or Profit, by Occasion or Colour of any such Lease or Ferm by any Manner of Means, upon Pain to forfeit for every Month so occupying any such Ferm, at any Time after the said Feast, contrary to this present Act, Ten Pounds, and upon Pain to forfeit Ten Times as much as any such spiritual Person, or any to his Use, shall take in any annual Rent, Advantage, or Profit, by Occasion or Colour of any such Lease, at any Time after the said Feast; the One Half of which Forfeitures to be to the King our Sovereign Lord, and the other Half to him that will sue for the same by original Writ, Bill, or Plaint of Debt, or by Information in any of the King's Courts; in which Action and Suit no Wager of Law shall be admitted for the Defendant, nor any Essoin or Protection allowed.

The spiritual Person which hath any Ferm or Profit out of Ferm, shall alien it forthwith.
Dyer, f. 351.
27 H. VIII. f. 25.

III. And be it also enacted, That all such Leases made, or hereafter to be made, unto any such spiritual Person or Persons, or to any other to their Use, for Term of Life, Term of Years, or at Will, of any Manors, Lands, Tenements, or Hereditaments, whereof they, or any of them, shall take any Profit or medling by themselves, or by any to their Use, after the said Feast of Saint *Michael*, by Colour of any such Lease or Grant, and not by them bargained, granted, and sold away before the said Feast, as is before limited, shall from henceforth be

Leases made to spiritual Persons, or to others to their Use, shall be void.

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utterly void, and of none Effect, as well against the Leasor or Leasors, Grantor and Grantors, their Heirs and Assigns, and against every of them, as against the Leassee or Leassees, and their Executors and Assigns, and every of them. (1)

In some Cases a spiritual Person may take to ferm the Temporalities of a Bishop, &c.

IV. Provided alway, That this present Act shall not extend to any spiritual Person or Persons, in and for taking to Ferm any Temporalities, during the Time of Vacations of any Archbishopricks, Bishopricks, Abbeys, Priories, or other Collegiate, Cathedral, or Coventual Churches, nor to any spiritual Person or Persons that shall tender or make any Traverse upon any Offices or Office, concerning his or their Freehold.

No spiritual Person shall buy to sell again any Merchandise, Corn, Cattle, &c.

V. And be it also enacted by the Authority aforesaid, That no spiritual Person or Persons, secular or regular, of what Estate or Degree soever they be, shall from henceforth by himself, nor by any other for him, nor to his Use, bargain and buy to sell again for any Lucre, Gain, or Profit, in any Markets, Fairs, or other Places, any Manner of Cattle, Corn, Lead, Tin, Hides, Leather, Tallow, Fish, Wool, Wood, or any Manner of Victual or Merchandise, what Kind soever they be of, upon Pain to forfeit Treble the Value of every Thing, by them, or by any to their Use, bargained and bought to sell again, contrary to this present Act; and that every such Bargain and Contract hereafter to be made by them, or by any to their Use, contrary to this Act, shall be utterly void, and of none Effect; and the One Half of every such Forfeiture to be to the King our Sovereign Lord, and the other Half to him that will sue for the same by original Writ of Debt, Bill, Plaint, or Information in any of the King's Courts; in which Action or Suit no Wager of Law for the Defendant shall be admitted, nor any Essoin nor Protection allowed.

In what Case a spiritual Person may sell again the Things which he hath bought.

VI. Provided alway, That if any such spiritual Person or Persons shall happen hereafter without Fraud or Covin to buy any Horses, Mares, or Mules, to the only Intent to occupy for himself or his Servants, to ride to and fro upon his necessary Business, or any other Cattles or Goods, to the only Intent and Purpose at the buying thereof to be employed and put in and about his necessary Apparel of his own House, or of his Person and Servants, or in, for, and about the only occupying, manuring, or Tillage of his own glebe or demesne Lands annexed to his Church, or for the necessary Expences of his own Household-keeping, and after the buying of any such Horses, Cattles, or Goods, or Exercise of them, or any of them, happeneth to mislike any of them that they should not be good, profitable, nor convenient for any of the Purposes abovesaid, for the which they were bought; that then every such spiritual Person or Persons may lawfully bargain and put away such Things so by him bought, without Fraud or Covin, for any of the Purposes abovesaid at his Pleasure and Advantage; this Act or any Thing therein contained notwithstanding.

Certain Houses of Religion may keep demesne Lands in their Hands for the Maintenance of their Houses.

VII. Provided alway, That all Abbots, Priors, Abbesses, Prioresses, Provosts, Presidents, Masters of Colleges and Hospitals, and all other spiritual Governors and Governesses of any spiritual Monasteries, or Houses of Religion, by what Name or Names soever they be called, having Manors, Lands, Tenements, and Hereditaments, and other yearly Profits in the Right of their Monasteries or Houses, of the yearly Value of eight hundred Marks, or under, and not above, may use and occupy as much and as many of their demene Lands, Fee-ferms, and Ferms, to their most Advantage, Commodity,

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(1) The Description of the Lessee in the Lease, as Doctor in Divinity is *prima facie* Evidence against him, that he is a spiritual Person within the Act. Frogmorton v. Scott. 2 E. 467.

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and Profit, to and for the only Maintenance of their Households and Hospitals, in as ample and large Manner as they or any of them, or their Predecessors, or the Predecessors of any of them, at any Time by the Space of One Hundred Years last past before the making of this Act have done, used, and occupied; any Thing in this present Act to the contrary notwithstanding.

Spiritual Persons may take in Ferm for the Maintenance of their Houses.
2 Bulstr. 18. Savil 82.

VIII. Provided also, That every other spiritual Person or Persons, not having sufficient glebe or demene Lands in their own Hands in the Right of their Churches, Monasteries, and Houses for Pasturage of Cattle, or for Increase of Corn, to and for the only Expences of their Housholders, and for their Carriages or Journeys, may take in Ferm other Lands, and buy and sell Corn and Cattle for the only Manurance, Tillage, and Pasturage of such Ferms, so that the Increase thereof be alway employed and put to and for the only Expences in their Households and Hospitalities, and not in any wise to buy and sell again for any other Commodity, Lucre, or Advantage, any Corn or Cattle, renewing, coming, or growing in and upon any such Ferm or otherwise, but only the Remain and Overplus above their Expences of their Housholds, if any such shall happen, of the Breed and Increase thereof, without Fraud or Covin; any Thing in this present Act to the contrary hereof notwithstanding.

The Penalty of Pluralities.
Cro. El. 601, 853. 1 Leonard 316. March 82. Co. pl. f. 368, 511. b. Moor 534. Cro. El. 351, 601, 858. Dyer 237, 253, 347, 351, 377. 4 Co. 75, 78, b. 24 Ed. 3. f. 39. Vaughan 131. 2 Roll. 451. F. N. B. 44. H. 51 L. Goldsb. 162. pl. 97.

IX. And be it enacted by the Authority aforesaid, That if any Person or Persons having One Benefice with Cure of Soul, being of the yearly Value of eight Pounds (1) or above, accept and take any other (2) with Cure of Soul, and be instituted and inducted (3) in Possession of the same, that then and immediately after such Possession had thereof, the first Benefice shall be adjudged in the Law to be void.

X. And that it shall be lawful to every Patron, having the Advowson thereof, to present another, and the Presentee to have the Benefit of the same, in such like Manner and Form as though the Incumbent had died or resigned; any License, Union, or other Dispensation to the contrary hereof obtained notwithstanding. And that every such Licence, Union, or other Dispensation had, or hereafter to be obtained contrary to this present Act, of what Name or Names, Quality or Qualities, soever they be, shall be utterly void, and of none Effect.

Any Dispensation contrary to this Statute shall be void.
Dyer 352. Savil 136. 25 H. 8. c. 21. Repealed by 1 & 2 Ph. & M. c. 8. s. 4. Dyer 347.

XI. And if any Person or Persons at any Time after the First Day of *April*, in the Year of our Lord GOD One Thousand Five Hundred and Thirty, contrary to this present Act, procure and obtain at the Court of *Rome*, or elsewhere, any Licence or Licences, Union, Toleration or Dispensation, to receive and take any mo Benefices with Cure than is above limited, or else at any Time after the said Day put in Execution any such Licence, Toleration, or Dispensation, before that obtained contrary to this Act, that then every such Person or Persons, so after the said Day suing for himself, or receiving and taking such Benefice by Force of such Licence or Licences, Union, Toleration, or Dispensation, that is to say, the same Person or Persons only and none other, shall for every such Default incur the Danger, Pain, and Penalty of Twenty Pounds Sterling, and also lose the whole Profits of every such Benefice or Benefices as he receiveth or taketh by Force of any such Licence or Licences, Union, Toleration, or Dispensation; the One Half of which Forfeiture to be to the King

(1) According to the Valuation in the King's Books, contrary to some former Decisions. Gibs, 906—Watson, c. 2.

(2) Without Regard to Value. Gibs, 906.

(3) But Institution without Induction is sufficient to vacate the Benefice—Gibs, 906—although Lapse only takes Place from the Time of Induction. See Wolferson *v.* Bishop of Lincoln, 2 Wils. 174, and *e. contra* in Error, 3 Bur. 1504.

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our Sovereign Lord, and the other Half thereof to him that will sue for the same by original Writ, Bill, Plaint of Debt, or Information in any of the King's Courts; in which Action and Suit no Wager of Law, Essoin, or Protection for the Defendant, shall be admitted or allowed.

They may keep their Benefices, which were there of possessed Ann 1530, except they have above Four.

XII. Provided always, That this Act concerning the not keeping of mo Benefices with Cure of Souls than One, extend, ne be prejudicial to any Person or Persons, which at any Time before the said First Day of *April*, in the Year of our Lord God One Thousand Five Hundred and Thirty, shall be really intitled or possessed of any such Benefices with Cure of Soul, as concerning or touching any of the same Benefices, whereof they shall then be already really intitled or possessed before the said Day, to or under the Number of Four, and not above; and if any such spiritual Person or Persons so being intitled or possessed of mo Benefices with Cure of Soul than Four, do not by the said First Day of *April* clearly, and without yearly Pension, resign, or otherwise give up all and every such Benefice and Benefices as he shall be so intitled and possessed of, above the said Number, that then it shall be lawful for every Parson, having the Advowson of any such Benefice, over the Number aforesaid, to present another, and the Presentee to have the Benefit of the same, in like Manner and Form as though it had been void by Death, or Resignation of the Incumbent; any Licence, Union, or other Dispensation to the contrary hereof obtained notwithstanding; and this Clause of Presentation to be taken and understood in and of such Benefices with Cure of Soul, as were given to any such spiritual Person, after the said Number of Four Benefices with Cure furnished and fulfilled.

Who may purchase Licences, and have more Benefices with Cure of Souls, than one. 13 Co. 5.

XIII. Provided also, That all spiritual Men now being, or which hereafter shall be of the King's Council, may purchase Licence or Dispensation, and take, receive, and keep Three Parsonages, or Benefices, with Cure of Soul; and that all other being the King's Chaplains, and not sworn of his Council, the Chaplains of the Queen, Prince, or Princess, or of any of the King's Children, Brethren, Sisters, Uncles, or Aunts, may semblably purchase Licence, or Dispensation, and retain and keep Two Parsonages and Benefices with Cure of Soul.

XIV. And in likewise, that every Archbishop and Duke may have Six Chaplains, whereof every One shall and may purchase Licence or Dispensation, and take, receive, and keep Two Parsonages or Benefices with Cure of Soul.

XV. And that every Marquis, and Earl, may have Five Chaplains, whereof every One may purchase Licence or Dispensation, and take, receive, and keep Two Parsonages or Benefices with Cure of Soul.

XVI. And that every Viscount, and other Bishop, may have Four Chaplains, whereof every one may purchase Licence, and receive, have, and keep Two Parsonages or Benefices with Cure of Soul, as is aforesaid.

4 Co. 90, 119.

XVII. And that the Chancellor of *England* for the Time being, and every Baron, and Knight of the Garter, may have Three Chaplains, whereof every One shall now purchase Licence or Dispensation, and receive, have, and keep Two Parsonages or Benefices with Cure of Soul.

Co. pl. 263, 513. Cro. El. 723.

XVIII. And that every Duchess, Marchioness, Countess, and Baroness, being Widows, may have Two Chaplains, whereof every One of them may purchase Licence or Dispensation, to receive, have, and keep Two Benefices with Cure of Soul.

4 Co. 73, 89, 119.

XIX. And that the Treasurer, and Comptroller of the King's House, the King's Secretary, and Dean of his Chapel, the King's

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Amner, and the Master of the Rolls, may have every of them Two Chaplains; and the Chief Justice of the King's Bench One Chaplain; and the Warden of the Five Ports for the Time being, One Chaplain; whereof every one may purchase Licence, and receive, have, and keep Two Parsonages or Benefices with Cure of Soul.

1 Anders. 200.

XX. And that the Brethren and Sons of all Temporal Lords, which are born in Wedlock, may every of them purchase Licence or Dispensation, and receive, have, and keep as many Parsonages or Benefices with Cure, as the Chaplains of a Duke, or an Archbishop.

XXI. And likewise the Brethren and Sons born in Wedlock of every Knight, may every of them purchase Licence or Dispensation, and receive, take, and keep Two Parsonages or Benefices with Cure of Soul.

Chaplains shall shew the Letters of their Lords or Masters.

XXII. Provided always, That the said Chaplains so purchasing, taking, receiving, and keeping Benefices with Cure of Soul, as is aforesaid, shall be bound to have and exhibit, where need shall be, Letters under the Sign and Seal of the King, or other their Lord and Master, testifying whose Chaplains they be, and else not to enjoy any such plurality of Benefices by being such Chaplain, any Thing in this Act notwithstanding.

Doctors and Batchelors of Divinity and Law may by Dispensation have two Benefices with Cure.

No Dispensation can licence any to have above two Benefices.

XXIII. Be it also provided, That all Doctors, and Batchelors of Divinity, Doctors of Law, and Batchelors of the Law Canon, and every of them, which shall be admitted to any of the said Degrees by any of the Universities of this Realm, and not by Grace only, may purchase Licence, and take, have, and keep Two Personages or Benefices with Cure of Soul; so that always the said Liberty, by any of the Provisions aforesaid given to any of the said Counsellors, Chaplains, and other persons before specified, to purchase Licence or Dispensation, and take, receive, and keep more Benefices than One, after the Manner and Form aforesaid, be taken and understood to extend in Number to no mo Benefices with Cure of Soul, than is above limited, accounting in the same, and as parcel thereof, such Benefices with Cure of Soul, as any the said Persons shall have in real Title, or in their possession, at the said First Day of *April*, in the Year of our Lord One Thousand Five Hundred and Thirty.

Archbishop may have eight Chaplains, and every Bishop four.

XXIV. Provided also, That every Archbishop, because he must occupy Eight Chaplains at Consecrations of Bishops, and every Bishop, because he must occupy Six Chaplains at giving of Orders, and Consecration of Churches, may every of them have Two Chaplains over and above the Number above limited unto them, whereof every One may purchase Licence and Dispensation, and take, receive, and keep as many Parsonages and Benefices with Cure of Soul, as is before assigned to such Chaplains.

Savil 79, 101. Co. pl. f. 515. Moor 561. pl. 763. Moor 540. pl. 712. Moor 542. pl 719. Rast. pla f. 599. Savil 32, 135. 2 Roll 10.

XXV. Provided also, and be it enacted by the Authority aforesaid, That no Person or Persons, to whom any Number of Chaplains, or any Chaplain, by any of the Provisions aforesaid is limited, shall in any wise, by Colour of any of the same Provisions, advance any spiritual Person or Persons, above the Number to them appointed, to receive or keep any mo Benefices with Cure of Soul, than is above limited by this Act, any Thing specified in the said Provisions notwithstanding; and if they do, then every such spiritual Person and Persons, so advanced above the said Number, to incur the Pain and Penalty contained in this Act.

What shall be non residence. Cro. El. 590, [illegible]. 719 Cro. [illegible]. 146. [illegible] 1 Lutw. 138 But see 5 [illegible]. 273.

XXVI. Be it also further enacted by the Authority aforesaid, That as well every spiritual Person now being promoted to any Archdeaconry, Deanry, or Dignity in any Monastery, or Cathedral Church, or other Church, Conventual or Collegiate, or being beneficed with any Parsonage or Vicarage, as all and every spiritual Person and Persons, which hereafter shall be promoted to any of the said Dignities or

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Benefices, with any Parsonage or Vicarage, from the Feast of Saint *Michael* the Archangel next coming, shall be personally resident, and abiding in, at, and upon his said Dignity, Prebend, or Benefice, or at One of them at the least; and in case that any such spiritual Person at any Time after the said Feast, keep not Residence (1) at One of his said Dignities, Prebends, or Benefices, (2) as is aforesaid, but absent himself wilfully by the Space of One Month together, or by the Space of Two Months, to be accounted at several Times in any One Year, and make his Residence and Abiding in any other places by such Time, that then he shall forfeit for every such Default Ten Pounds Sterling; the One Half thereof to the King our Sovereign Lord, and the other Half of the same to the Party that will sue for the same in any of the King's Courts (3) by original Writ of Debt, Bill, Plaint, or Information; in which Action and Suit the Defendant shall not wage his Law, nor have any Essoin or Protection allowed.

The Penalty for procuring of Dispensations to be non-resident.

XXVII. And if any Person or Persons procure or obtain at the Court of *Rome*, or elsewhere, any Manner of Licence or Dispensation to be non-resident at their said Dignities, Prebend, or Benefices, contrary to this Act, that then every such Person or Persons putting in Execution any such Dispensation or Licence for himself, from the said First Day of *April*, in the Year of our Lord God One Thousand Five Hundred and Thirty, shall run and incur in the Penalty, Damage, and Pain of Twenty Pounds Sterling for every Time so doing, to be forfeited and recovered as is above said, and such Licence or Dispensation so procured, or to be put in Execution, to be void and of none Effect.

28 H. VIII. c. 13. What spiritual Persons may be discharged of Residence, and by what Means. 25 H. VIII. c. 16. 33 H. VIII. c. 28.

XXVIII. Provided alway, That this Act of Non-residence shall not in any wise extend, ne be prejudicial to any such spiritual Person as shall chance to be in the King's Service beyond the Sea, nor to any Person or Persons going to any Pilgrimage or holy place beyond the Sea, during the Time that they shall so be in the King's Service, or in their Pilgrimages going and returning Home; nor to any Scholar or Scholars being conversant and abiding for Study, without Fraud or Covin, at any University within this Realm, or without; nor to any of the Chaplains of the King or Queen, daily or quarterly attending and abiding in the King's or Queen's most honourable Households; nor to any of the Chaplains of the Prince or Princess, or any of the King's or Queen's Children, Brethren or Sisters, attending daily in their honourable Households, during so long as they shall attend in any of their said Households; nor to any Chaplain of any Archbishop or Bishop, or of any spiritual or temporal Lords of the Parliament, daily attending, abiding, and remaining in any of their honourable Households; nor to any Chaplain of any Duchess, Marquis, Countess, Viscountess, or Baroness, attending daily, and abiding in any of their honourable Households; nor to any Chaplain of the Lord Chancellor or Treasurer of *England*; the King's Chamberlain, or Steward of his Household for the Time being, the Treasurer and

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(1) The Residence must be at the Parsonage House, or House of the Dignity, if there be one; and if there be a Parsonage House within the Parish, and none within the Dignity, a Residence at any other House within the Dignity will not excuse. Law *v.* Ibbetson, 5 Burr. 2722. If there be no Parsonage House, the Incumbent must reside at some other House within the Parish. Wilkinson *v.* Allot, cited 5 Burr, 2725.

(2) This was ruled not to extend to an augmented Curacy—Jenkinson *v.* Thomas, 4 T. R. 695—but the Law in that Respect is altered by Stat. 43 Geo. III. c. 84.

(3) No Information lies upon this Statute at the Assizes. Garland *v.* Burton, 2 Str. 1103.

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21 H. VIII. c. 13.

Comptroller of the King's most honourable Household for the Time being, attending daily in any of their honourable Households; nor to any Chaplain of any of the Knights of the honourable Order of the Garter, or of the Chief Justice of the *King's Bench*, Warden of the Ports, or also of the Master of the Rolls; nor to any Chaplain of the King's Secretary, and Dean of the Chapel, Amner for the Time being, daily attending and dwelling in any of their Households, during the Time that any such Chaplain or Chaplains shall abide and dwell, without Fraud or Covin, in any of the said honourable Households; nor to the Master of the Rolls, or Dean of the Arches, nor to any Chancellor or Commissary of any Archbishop or Bishop; nor to as many of the Twelve Masters of the *Chancery*, and Twelve Advocates of the Arches, as be or hereafter shall be spiritual Men, during so long Time as they shall occupy their said Rooms and Offices; nor to any such spiritual Persons as shall happen by Injunction of the Lord Chancellor, or the King's Council, to be bound to any daily Appearance and Attendance to answer to the Law, during the Time of such Injunction.

See 25 H. VIII. c. 16. [post No 2.] as to the Chaplains of Judges, or of the Attorney or Solicitor General; and 28 H. VIII. c. 13, s. 2, as to Students in either University, [post No. 4] and 33 H. VIII c. 28. [post No 5.] as to Chaplains of the Officers of the Duchy of Lancaster, &c.

XXIX. Provided also, That it shall be lawful to every spiritual Person or Persons, being Chaplains to the King our Sovereign Lord, to whom it shall please his Highness to give any Benefices or Promotions spiritual, to what Number soever they be, to accept and take the same, without incurring the Danger, Penalty, and Forfeiture in this Estatute comprised; and that also it shall be lawful to the King's Highness, to give Licence to every of his own Chaplains for Non-residence upon their Benefices; any Thing in this present Act contained to the contrary notwithstanding. (1)

The King's Licence of Non-residence.

XXX. And be it further enacted by the Authority aforesaid, That no spiritual Person, secular or regular, beneficed with Cure, as is afore rehearsed, from the Feast of Saint *Michael* the Archangel next coming, by Authority of any Manner, Licence, Dispensation, or otherwise, shall take any particular Stipend, or Salary to sing for any Soul, nor have nor occupy by himself, or by any other to his Use, any Parsonage or Vicarage in Ferm, of the Lease or Grant of any Person or Persons, nor take any Profit or Rent out of any such Ferm, upon Pain to forfeit Forty Shillings for every such Week that he, or any to his Use, shall occupy or have any such Stipend to Ferm contrary to this present Act, and upon pain to lose Ten Times the Value of such Profit or Rent as he shall take out of any such Ferm after the said Feast; the one Half of such Forfeitures to be to the King our Sovereign Lord, and the other Moiety to him that will sue for the same by original Writ, Bill, plaint of Debt, or by Information in any of the King's Courts, in which Suit and Action no Wager of Law shall be admitted for the Defendant, nor any Essoin or Protection allowed.

No spiritual Person beneficed with Cure shall take in Ferm any Parsonage or Vicarage.

XXXI. Provided alway, That no Deanry, Archdeaconry, Chancellorship, Treasurership, Chantership, or Prebend in any Cathedral or Collegiate Church, nor Parsonage that hath a Vicar indued, nor any Benefice perpetually appropriate, be taken or comprehended under the Name of Benefice having Cure of Soul in any Article afore specified.

Promotions not accounted Benefices with Cure. 3 Inst. 155.

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(1) In Brown *v.* Mugg. 1 Salk 161, 2 Lord Raym. 791, it was held, first, that a Presentation of the King, of his own Chaplain, does import a Dispensation which the King himself, as supreme Ordinary, has a Power to grant; but if the King's Chaplain be presented to a second Benefice by a Subject, a Dispensation is necessary, and must be obtained before his Institution to a second Living;—2dly, that a Chaplain extraordinary is not a Chaplain within the Benefit of the Statute, but only the Chaplains in Ordinary.

A Chaplain to be within the Statute ought to be retained under Seal. 3 Cro. 484, Gold 41.

No. 1.
21 H. VIII. c. 13.

No spiritual Person shall keep a Tanhouse or Brewhouse.

XXXII. Provided also, and be it enacted by the Authority aforesaid, That no spiritual Person or Persons, regular or secular, of what Estate, Degree, or Condition soever he or they be, from the First Day of *April* next coming, have, use, or keep by him or themselves, or by any Person or Persons to his or their Use or Commodity, any Manner of Tan-house or Tan-houses, to be used or occupied to his or their own Use, Commodity, or Behoof; nor from the said First Day of *April* next coming, shall have, use, or keep any Manner of Brew-house, or Brew-houses, to any other Use, Intent, or Behoof, than only to be spent and occupied in his or their own Houses, upon pain to forfeit for every Month so using and occupying any of the said Mysteries or Occupations, Ten Pounds. The one Moiety thereof to the King our Sovereign Lord, and the other Moiety to him that will sue for the same by Original Writ, Bill, plaint of Debt, or Information in any of the King's Courts, in which Action and Suit no Wager of Law shall be admitted for the Defendant, ne any Essoin or Protection allowed.

The Chaplains of a Duchess, &c. which have taken Husbands.

XXXIII. Provided always, That every Duchess, Marquess, Countess, Baroness, Widows, which have taken, or that hereafter shall take any Husbands under the Degree of a Baron, may take such Number of Chaplains, as is above limited to them being Widows; and that every such Chaplain may purchase Licence to have and take such Number of Benefices with Cure of Soul, and have like Liberty of Non-residence, in Manner and Form as they might have done, if their said Ladies and Mistresses had kept themselves Widows; any Thing in this present Act contained to the contrary notwithstanding.

Spiritual Persons may keep sufficient of their own Land to maintain their Houses.

XXXIV. Provided always, That every spiritual Person or Persons having Lands, Tenements, or other Possessions in the Right of their Houses, above the yearly Value of Eight Hundred Marks, may keep and retain in their Occupation and Manurance, as much of the said Lands and Tenements, and other possessions, as shall be necessary and sufficient for Pasturage of their Cattle, and for Tillage of Corn, to be employed and spent for the only Maintenance, Sustentation, and keeping of his or their Housholds and Hospitalities, without Fraud or Covin; any Thing in this present Act to the contrary thereof notwithstanding.

A spiritual Person may take a Dwelling-house with an Orchard or Garden for his Dwelling.
Goldsb. 169. pl. 100. 3 Cro 590.

XXXV. Provided alway, That it may be lawful to every spiritual Person or Persons to take in Ferm any Messes, Mansions, or Dwelling Houses, having but only Orchards or Gardens, in any City, Borough, and Town, for their own Habitation or Dwelling, any Thing in this Act to the contrary notwithstanding; so that no Person spiritual, other than be above provided for, for their Non-residence, have any Liberty of Non-residence by Colour of this Proviso. (1) *Enforced by* 25 H. 8 c. 21. *which is repealed by* 1 & 2 P. & M. c. 8, *and revived by* 1 Eliz. c. 1.

(1) If a qui tam Informer, on this Act, be nonsuited, the Defendant is intitled to Costs. Cowp. 366.

No. 2.

25 Henry VIII. c. 16.—An Act that every Judge of the High Courts may have one Chaplain beneficed with Cure.

25 H. VIII. c. 16.

21 H. VIII. c. 13.

'WHERE in the Parliament holden at *Westminster* the twenty-first Year of the Reign of our Sovereign Lord King Henry the Eighth; it was among other Things ordained and provided, That certain honourable Persons, as well Spiritual as Temporal, shall have Chaplains beneficed with Cure, to serve them in their honourable

'Houses, which Chaplains shall not incur the Danger of any Penalty 'or Forfeiture made or declared in the same Parliament for Nonresi'dence upon their said Benefices, or for obtaining Licences for Dis'pensations of Pluralities: In the which Act no Provision was made 'for any of the King's Judges of his High Courts, commonly called 'the King's Bench and the Common Pleas, except only for the Chief 'Judge of the King's Bench, nor for the Chancellor nor the Chief 'Baron of the King's Exchequer, nor for any other inferior Persons 'being of the King's most honourable Council, as by the said Act 'may appear.'

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25 H. VIII. c. 16.

II. Wherefore it is ordained and enacted by Authority of this present Parliament, That as well every Judge of the said High Courts, and every of the Chancellor and Chief Baron of the said Exchequer, the King's General Attorney and General Solicitor, which for the Time is, be, or shall be, shall and may from henceforth at his Liberty retain and have singularly to every of them in his House, or attendant to his Person, one Chaplain having one Benefice with Cure of Souls, which may be absent from his said Benefice, and not resident upon the same; the said Statute made in the said one and twentieth Year, or any other Statute, Act or Ordinance made to the contrary in any wise notwithstanding.

No. 3.

23 Henry VIII. c. 11.—For the Restitution of the First-Fruits in Time of Vacation to the next Incumbent.

'FORASMUCH as in the Statute of the Payment unto the King's 'Majesty, his Heirs and Successors, of the First-fruits of 'Spiritual Promotions, Offices, Benefices and Dignities within this 'Realm, and other the King's Dominions, express Mention and De'claration is not had ne made, from what Time the Year shall be 'accounted, in which the First-fruits shall be due and payable to his 'Highness, that is to wit, whether immediately from the Death, Re'signation or Deprivation of every Incumbent, or from the Time of 'Admission or new taking of Possession in every such Promotion.

28 H. VIII. c. 11.
The Reasons for making this Act.
1 Roll 462, 469
25 H. VIII. c. 3.

'II. And also by reason that in the same Statute it is not declared 'who shall have the Fruits, Tithes and other Profits of the said Be'nefices, Offices, Promotions and Dignities Spiritual, during the 'Time of Vacation thereof, divers of the Archbishops and Bishops of 'this Realm have, not only when the Time of perceiving and taking 'of Tithes (that is to say, Wool, Lamb, Corn and Hay, and Tithes 'usually paid at the holy Time of *Easter*) hath approached, deferred 'the Collation of such Benefices as have been of their own Patronage, 'but also have, upon Presentations of Clerks made unto them by the 'just Patrons, protracted and deferred to institute, induct and admit 'the same Clerks, to the Intent that they might have and perceive to 'their own Use the same Tithes growing during the Vacation; so that 'through such Delays (over and above the First-fruits, which be justly 'due to the King's Highness) they have been constrained also to lose 'all or the most Part of one Year's Profits of their Benefices and Pro'motions, and to serve the Cure at their and their Friends proper Costs 'and Charges, or utterly to forsake and give over their Benefices and 'Promotions, to their great Loss and Hindrance.'

III. For Reformation whereof, Be it ordained and enacted by the King our Sovereign Lord, with the Assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same, That the said Year, in which the First-fruits shall be paid to the King's Grace, shall begin and be ac-

The Time from which First-Fruits are due to the King.

No. 3. 28 H. VIII. c. 11.

Fruits taken during the Vacation of a Benefice, shall be restored to the next Incumbent. See 1 El. c 4 § 24. Co. pl. f. 358. b. Vin Ab. V 13. 375 to 378.

counted immediately after the Avoidance or Vacation of any such Benefice or Promotions Spiritual afore rehearsed; and that the Tithes, Fruits, Oblations, Obventions, Emoluments, Commodities, Advantages, Rents and all other whatsoever Revenues, Casualties or Profits, certain and uncertain, affering or belonging to any Archdeaconry, Deanry, Prebend, Parsonage, Vicarage, Hospital, Wardenship, Provostship, or other Spiritual Promotion, Benefice, Dignity or Office (Chaunteries only except) within this Realm, or other the King's Dominions, growing, rising or coming, during the Time of Vacation of the same Promotion spiritual, shall belong and affere to such Person as shall be thereunto next presented, promoted, instituted, inducted or admitted, and to his Executors, towards the Payment of the First-fruits to the King's Highness, his Heirs and Successors; any Usage, Custom, Liberty, Privilege or Prescription to the contrary had, used or being, in any wise notwithstanding.

The Forfeiture of the Ordinary which receiveth the Fruits of a Benefice during the Vacation, and doth not restore them to the next Incumbent.

IV. And it is also enacted by the Authority aforesaid, That if any Archbishop, Bishop, Archdeacon, Ordinary, or any other Person or Persons to their Uses and Behoof, at any Time heretofore sith the first Day of *May* last past, have perceived, received or taken, or at any Time hereafter do perceive, receive or take the Fruits, Tithes, Obventions, Oblations, Emoluments, Commodities, Revenues, Rents, Advantages, Profits or Casualties, coming, growing or belonging, or which hereafter shall come, grow, affere, or belong to any Archdeaconry, Deanry, Prebend, Parsonage, Vicarage. Hospital, Wardenship, Provostship or other Spiritual Promotion, Benefice, Dignity or Office (Chaunteries only excepted) within this Realm or other the King's Dominions, during the Vacation of such Archdeaconry, Deanry Prebend, Parsonage, Vicarage, Hospital, Wardenship, Provostship or other Spiritual Promotion, Benefice, Dignity or Office (Chaunteries only excepted) and the same, upon reasonable Request from henceforth to be made, doth not render, restore, satisfy, content and pay to the next Incumbent being lawfully instituted, inducted, or admitted to such Archdeaconry, Deanry, Prebend, Parsonage or Vicarage, or other Promotion, Benefice, Dignity or Office spiritual, except before excepted, or do let or interrupt the said Incumbent to have the same; that then every Archbishop, Bishop, Archdeacon, Ordinary or other Person so doing, shall forfeit and lose the treble Value of so much as he shall then have received of the Fruits of every Prebend, Parsonage, Vicarage, Hospital, Wardenship, Provostship or other Spiritual Promotion, whereof he so shall perceive, receive or detain, let or interrupt the Incumbent to perceive, receive and have the Fruits, Tithes, Obventions, Oblations, Emoluments, Commodities, Revenues, Rents, Advantages, Profits, or Casualties; the Moiety of which Forfeiture shall be to the King our Sovereign Lord, and the other Moiety thereof to the Incumbent of the same Prebend, Parsonage or Vicarage, or other Spiritual Promotion, to be recovered in any of the King's Courts by Action, Bill, Plaint, Information or otherwise, in which Action or Suit the Defendant shall not be admitted to wage his Law, nor any Protection or Essoin shall be unto the Defendant allowed.

What Part of the Fruits of a Benefice the Ordinary may retain in his Hands, and for what Causes.

V. Provided alway, That it shall be lawful to every Archbishop, Bishop, Archdeacon and Ordinary, their Officers and Ministers, to retain in his or their Custody so much of the Tithes, Fruits, Obventions, Oblations, Emoluments, Commodities, Advantages, Rents, Revenues, Casualties, and Profits, as shall amount to pay unto such Person or Persons, as hath or shall serve or keep the Cure of such Archdeaconry, Deanry, Prebend, Parsonage, or Vicarage, or other spiritual Promotion, during the Vacation, his or their reasonable Stipend or Salary; and also for the Collection, Gathering, and Levying of such Tithes, Fruits, Emoluments, Rents, and other

No. 3.
28 H. VIII. c. 11.

Profits rising and growing during the Vacation aforesaid; any Thing in this Act contained to the contrary in any wise notwithstanding.

Incumbents may declare their Wills of any Corn sown by them upon their Glebe Lands.

• VI. Provided also, and be it further enacted by the Authority aforesaid, That in case any of the Incumbents aforesaid happen to die, and before his Death hath caused any of his Glebe Lands to be manured, and sown at his proper Costs and Charges with any Corn or Grain; that then in that Case, all and every of the same Incumbents may make and declare their Testaments of all the Profits of the Corn growing upon the said Glebe Lands so manured and sown; any Thing contained in this present Act in any wise notwithstanding

If a spiritual Person do demise his Benefice for Years, and after doth resign or die, how long the Lessee may enjoy it. Altered by 1 & 2 Ph. & M. c. 17.

'VII. And where also before this Time divers and many Parsons, 'Vicars, and other spiritual Persons, being seised for Term of their 'Lives, of and in the said spiritual Promotions aforenamed, as well 'for great Sums of Money to them beforehand paid, as for other 'Causes and Considerations, have let in Ferm for Term of Years, by 'sufficient Writings, their said Parsonages, Vicarages, and other 'spiritual Promotions, or Part thereof, unto divers and many of the 'King's Subjects, and after such Leases by them so made, the Lessors 'thereof have oftentimes used to resign their said Benefices or spiritual 'Promotions so demised and letten in Ferm; by reason of which 'Resignation and other Acts of the said Lessors, the said Benefices 'and other spiritual Promotions have been void, and the Title and 'Interests of the said Lessees hath been thereby annihilate and of none 'Effect in the Law, contrary to Right and good Conscience: For 'Reformation whereof, and for a Quietness the better hereafter to be 'had and continued between the King's Subjects,' Be it enacted by 'Authority of this present Parliament, That from the foresaid first Day of *May* last past, no manner of such Lease, by sufficient Writing heretofore made, nor hereafter to be made, by any spiritual Person within this Realm of *England, Wales*, or the Marches of the same, to any lay Person, of any Parsonage, Vicarage, or other spiritual Promotion aforesaid, within this Realm, upon which Lease the Rent and Services reserved, with other the yearly Charges of the Lease, as in serving the Cure and otherwise, shall amount within forty Shillings by the Year of as much as the said Parsonage, Vicarage, or other spiritual Promotion aforesaid, so letten, is rated and valued at upon the King's Books, for paying the First-fruits, shall be adjudged void, annihilate or determined, by reason of any such Resignation, or other Avoidance of the said Benefice or spiritual Promotion so letten, by the only Act of the said Lessor: but that every such Lessee or Grantee of such Benefices or spiritual Promotions aforesaid, their Executors or Assigns, shall have and may enjoy their Terms and Interests of and in the same, for the Term of six Years, to be accounted next and immediately after the said Avoidance, if the said Lessor do so long live, and the Lease so by him before made do so long continue and endure; and that after such Avoidance, the Successor or Successors of every such Lessor shall and may distrain for the Rent and Services so reserved, and have their Actions of Debt and all other Advantages by way of Action, Entry, or otherwise, against the said Lessee, his Executors or Assigns, for Recovery of the said Rent and Covenants upon the said Lease reserved, as the Lessor thereof might have had if no such Avoidance had been had. (1)

(1) By 1 & 2 Ph. & M. c. 17, "*touching Leases to be hereafter made by spiritual Persons*, so much of this Act as relates to making good any Leases, shall not extend to any Lease made by any Parson, Vicar, or any other, having spiritual Promotion, after the Feast of the Purification then next.

No. 3.
28 H. VIII. c. 11.

VIII. And further be it enacted by the Authority aforesaid; That if hereafter it happen any such Lessor to decease and die before the End of the Term by him so made, and that there be one Year at least to come of the said Term, that then it shall be lawful to the Lessee thereof, his Executors or Assigns, to hold and enjoy their said Lease to the End of the same Year, wherein he is so entered at the Time of his said Lessor's Death, if his said Lease do so long continue, bearing and paying unto the Successor of every such Lessor all such Rent and Services, as for the Remnant of the said Year shall upon every such Lease be due; for the Recovery whereof the said Successor shall and may have all such Ways and Advantages as before is limited and given to the Successor, where his Predecessor maketh such Lease, and resigneth.

The Successors shall have the Parsonage-house and the Glebe not sown.

IX. Provided alway, That every Successor, after the Death of his Predecessor, may and shall have, upon One Month's Warning after the Time of his Induction, the Mansion-house of every such Parsonage, Vicarage, or other spiritual Promotion aforesaid, with the Glebe belonging to the same, not being sown at the Time of his said Predecessor's Death, for Maintenance of his Houshold, deducting therefore in his Rent, as heretofore hath been born for the same, or as it is reasonably worth; any Thing in this Act contained to the contrary notwithstanding.

Provision for the Curate who serves during the Vacation.

X. Provided alway, That if the Fruits of the Vacation of the said spiritual promotions be not sufficient to pay the Curate's Stipend and Wages for serving the Cure the Vacation Time, that then the same to be born and paid by the next Incumbent within Fourteen Days next after that he hath the possession of any of the said Promotions spiritual.

No. 4.

28 Henry VIII. c. 13.—The Bill for Non-residence of spiritual Men and their Beneficcs.

28 H. VIII. c 13.
A Recital of 21 H. VIII. c. 13, sec. 28, and of the Practices made use of to evade the Meaning of the same
25 H. VIII. c. 16.

'WHEREAS in the Parliament begun at *London* the Third Day of *November* in the Twenty-first Year of the Reign of our Sovereign Lord King HENRY the Eighth, and from thence adjourned and prorogued to the Palace of *Westminster* the Seventeenth Day of *December* then next ensuing, amongst other good Acts and Ordinances, then and there by the Authority of the said Parliament, it was established, ordained and enacted, That as well every spiritual Person, then being promoted to any Archdeaconry, Deanry or Dignity in any Monastery or Cathedral Church, or other Church Conventual or Collegial, or being beneficed with any Parsonage or Vicarage, as all and every spiritual Person and Persons, which should after the Feast of Saint *Michael* the Archangel, which was in the foresaid Twenty-first Year of the Reign of our Sovereign Lord King HENRY the Eighth, be promoted to any of the said Dignities or Benefices with any Parsonage or Vicarage, should from the said Feast of Saint *Michael* the Archangel be personally resident and abiding at and upon his said Dignity, Prebend or Benefice, or at one of them at the least; (2) and in case any such spiritual Person, at any Time after the said Feast, kept not Residence at one of his said Dignities, Prebend or Benefices, (as is aforesaid) but absent himself wilfully by the Space of one Month together, or by the Space of two Months to be accounted at several Times in any one Year, and make his Residence and Abiding in any other places by such Time; that then he shall forfeit for every such Default Ten Pounds Sterling, as in the same Act more plainly doth appear; (3) in which Act among other

'Provisions contained and specified in the same, it was provided, That 'the said Act of Non-Residence should not in any wise extend ne be 'prejudicial to any Scholar or Scholars, being conversant and abiding 'for Study, without Fraud or Covin, at any University within this 'Realm or without, as by the same Provision doth also appear more 'at large; (4) sithence the making of which good Act and Statute, 'divers and many Persons being beneficed with Cure of Souls (as is 'aforesaid) and being not apt to study by reason of their Age, or 'otherwise, ne never intending, before the making of the said Act, 'to travel in Study within any of the said Universities for the Increase 'of Learning, but rather minding and intending their own Ease, sin-'gular Lucre and Pleasure, by the same Provision colourably to 'defraud the same good Statute and Ordinance, do daily and commonly 'resort and repair to the said Universities of *Oxford* and *Cambridge*, 'and to either of them, where they, under the said pretence and 'colour of Study, do continue and abide, living dissolutely, nothing 'profiting themselves by Study at all in Learning, but consume the 'Time in Idleness and in other Pastimes, and insolent Pleasures, 'giving Occasion and evil Example thereby to other young Men and 'Students within the said Universities, little or nothing regarding their 'Cure and Charge of Souls, contrary to the Minds and Intent of the 'Makers of the foresaid good Statute and Ordinance; (5) and also 'divers and many old beneficed Men have and do continually remain 'there, never exercising nor practising their Learning to the Example 'of Virtue and Maintenance of the common Weal, in Discharge of 'their Conscience, according to their Duty, having nevertheless, and 'occupying such Rooms and Commodities, as were instituted and 'ordained for the Maintenance and Relief of poor Scholars, to the 'great Hindrance and Detriment of the same:'

No. 44
28 H. VIII. c. 13.

II. Be it therefore enacted by the King our Sovereign Lord, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, That all and singular spiritual Person and Persons, which now be, or hereafter shall be, to any Benefice or Benefices promoted, as is aforesaid, being above the Age of Forty (*) Years, (the Chancellor, Vice-Chancellor, Commissary of the said Universities, or any of them, Wardens, Deans, Provosts, Presidents, Rectors, Masters, Principals and other Head Rulers of Colleges, Halls and other Houses or Places Corporate within the said Universities, or any of them, Doctors of the Chair, Readers of Divinity in the common Schools of Divinity in any of the said Universities, only excepted) shall be resident and abiding at and upon one of their said Benefices, according to the Intent and true Meaning of the said former Act, upon such pain and penalties as be contained in the said former Act made and appointed for such beneficed Persons for their Non-Residence. (2) And that none of the said beneficed Persons being above the Age aforesaid, except before except, shall from henceforth be excused of their Non-Residence upon the said Benefices, for that they be Students or resiant within the said Universities, or any of them; any Proviso, or any other Clause or Sentence specified or contained in the said former Act of Non-Residence, or any other Thing or Things, to the contrary hereof in any wise notwithstanding.

What spiritual Persons may be discharged from Residence upon their Benefices, and for what Cause.
21 H. VIII. c. 13.

III. And over this be it enacted by the Authority aforesaid, That all and singular such beneficed Persons, being under the Age of Forty Years, resiant and abiding within the said Universities, or any of them, shall not enjoy the Privilege and Liberty of Non-Residence, contained in the Proviso of the said former Act, made for the Scho-

(*) Reduced to Thirty by Stat. 43 Geo. III. c. 94, § 16.

No. 4. 28 H. VIII. c. 13.

lars and Students of the said Universities, or any of them, unless he or they be present at the ordinary Lecture and Lectures, as well at home in their Houses, as in the common School or Schools, and in their proper Persons keep Sophisms, Problems, Disputations and other Exercises of Learning, and be Opponent and Respondent in the same, according to the Ordinances and Statutes of either of the said Universities, where he or they shall be so abiding or resiant; any Thing contained in the said Proviso or former Act to the contrary notwithstanding.

IV. Provided alway, That this Act shall begin to take Effect at the Feast of Saint *Michael* the Archangel next coming, and not before.

Proviso for Readers or Lectures, &c. in the Universities, and for those that proceed Doctors in Divinity, Law, or Physick.

V. Provided alway, That this Act, nor any Thing therein contained, shall extend to any Person or Persons which now is, or hereafter shall be Readers of any publick or common Lecture in Divinity, Law Civil, Physic, Philosophy, Humanity, or of any of the liberal Sciences, or publick or common Interpreters or Teachers of the *Hebrew* Tongue, *Chaldee* or *Greek*, in whatsoever College or place of any of the said Universities, the said persons for the Time being shall read the said common or publick Lectures; nor yet to any Person or Persons after or above the Age of Forty Years, which shall resort to any of the said Universities to proceed Doctors in Divinity, Law Civil or Physick, for the Time of their said proceedings, and executing of such Sermons, Disputations or Lectures, which they be bound by the Statutes of the Universities there to do for the said Degrees so obtained.

No. 5.

33 Henry VIII. c. 28.—An Act for the Chancellor of the Duchy of *Lancaster*, and others, to have Chaplains.

33 H. VIII. c. 28. 21 H. VIII. c. 13.

'TO the King our Sovereign Lord. Where in the Parliament holden at *Westminster* in the One and Twentieth Year of your most gracious Reign, it was amongst other Things ordained and provided, That certain honourable persons, and other of your Highness Counsellors and Officers, as well Spiritual as Temporal, should and might have Chaplains beneficed with Cure, to serve and attend upon them in their Houses, (2) which Chaplains should not incur the Danger of any Penalty or Forfeiture made or declared in the same Parliament for Non-Residence upon their said Benefices, or for obtaining Licences or Dispensations of Pluralities, (3) in which Act is no Provision made for any the Head Officers of your Grace's several Courts of your Duchy of *Lancaster*, the Courts of Augmentations of the Revenues of your Highness Crown, the First-Fruits and Tenths, the Master of your Majesty's Wards and Liveries, the General Surveyors of your Grace's Lands, and other your Grace's Courts.'

Certain Persons which may retain one Chaplain having a Benefice with Cure of Souls, that may be absent from his Benefice.

II. In Consideration whereof, it may please your Majesty that it may be enacted by your Highness, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That the Chancellor of the said Court of the Duchy of *Lancaster*, the Chancellor of your Highness Court of Augmentation, the Chancellor of your Grace's Court of First-Fruits and Tenths, the Master of your Highness Wards and Liveries, and every of your Grace's General Surveyors of your Highness Lands, the Treasurer of your Grace's Chamber, the Treasurer of your Highness Court of Augmentations, and the Groom of your Grace's Stole, and every of them for the Time being, shall and

No. 5.
33 H. VIII. c. 13.

may retain singularly to every of them in his House, or attendant unto his person, one Chaplain having one Benefice with Cure of Souls, which may be absent from the said Benefice, and non-resident upon the same; the said Estatute made in the said Twenty-first Year of your most gracious Reign, or any other Estatute, Act or Ordinance made to the contrary in any wise notwithstanding.

These Chaplains must sometimes resort to their Cure.

III. Provided alway, and be it enacted by the Authority aforesaid, That every of the said Chaplains so being beneficed as aforesaid, and dwelling with any the Officers afore named, shall personally repair two Times in every Year at the least to his said Benefice and Cure, and there to tarry and abide by the Space of eight Days at every such Time at the least, to visit and instruct his said Cure, (2) upon the Pain to forfeit for every Time so failing, Forty Shillings, the one Moiety thereof to the King our Sovereign Lord, the other to such as will sue for the same by Action of Debt, Bill, Plaint or Information in any of the King's Courts of Record, in which Suit no Essoin, Protection or Wager of Law shall be allowed.

No. 6.

13 Eliz. c. 12.—An Act for the Ministers of the Church to be of sound Religion.

13 Eliz. c. 12.
This Act enforced by 3 Ann. c. 5.

THAT the Churches of the Queen's Majesty's Dominions may be served with Pastors of sound Religion, Be it enacted by the Authority of this present Parliament, That every Person under the Degree of a Bishop, which doth or shall pretend to be a Priest or Minister of God's holy Word and Sacraments, by reason of any other Form of Institution, Consecration, or Ordering, than the Form set forth by Parliament in the Time of the late King of most worthy Memory, King EDWARD the Sixth, or now used in the Reign of our most gracious Sovereign Lady before the Feast of the Nativity of Christ next following, shall in the Presence of the Bishop or Guardian of the Spiritualities of some one Diocese where he hath or shall have Ecclesiastical Living, declare his Assent, and subscribe to all the Articles of Religion, which only concern the Confession of the true Christian Faith and the Doctrine of the Sacraments, comprised in a Book imprinted, intituled, 'Articles, whereupon it was agreed by the 'Archbishop and Bishops of both Provinces, and the whole Clergy 'in the Convocation holden at *London* in the Year of our Lord God 'one thousand five hundred and sixty-two, according to the Computation of the Church of *England*, for the Avoiding the Diversities 'of Opinions, and for the establishing of Consent touching true 'Religion put forth by the Queen's Authority;' and shall bring from such Bishop or Guardian of Spiritualities in Writing, under his Seal authentick, a Testimonial of such Assent and Subscription: and openly on some *Sunday* in the Time of the public Service afore Noon, in every Church where by reason of any Ecclesiastical Living he ought to attend, read both the said Testimonial and the said Articles; upon Pain that every such Person which shall not before the said Feast do as is above appointed, shall be *ipso facto* deprived, and all his Ecclesiastical Promotions shall be void, as if he then were naturally dead.

Cro. Jac. 593.
Every Ecclesiastical Person shall subscribe the Articles touching the Confession of the Faith, and declare his Assent thereunto.
March 119.
Vaugh. 131, 133.
Lane 4.
Dyer 377.
Cro. El. 252, 511, 679.
1 Roll 83, 475.
Reading of the Articles and Testimonial.
Hob. 168.
6 Cok. 29.

The Penalty for maintaining of Doctrine against the Articles.

II. And that if any Person Ecclesiastical, or which shall have Ecclesiastical Living, shall advisedly maintain or affirm any Doctrine directly contrary or repugnant to any of the said Articles, and being convented before the Bishop of the Diocese of the Ordinary, or before the Queen's Highness' Commissioners in Causes Ecclesiastical, shall persist therein, or not revoke his Error, or after such Revocation

No. 6.
13 Eliz. c. 12.

eftsoon affirm such untrue Doctrine, such Maintaining or Affirming and Persisting, or such eftsoon Affirming, shall be just Cause to deprive such Person of his Ecclesiastical Promotions; and it shall be lawful to the Bishop of the Diocese or the Ordinary, or the said Commissioners, to deprive such Person so persisting, or lawfully convicted of such eftsoons Affirming, and upon such Sentence of Deprivation pronounced he shall be indeed deprived.

Several Things required in him who shall be admitted to a Benefice
1 Leon. 230.
1 Anders. 62.

III. And that no Person shall hereafter be admitted to any Benefice with Cure, except he then be of the Age of Three and Twenty Years at the least and a Deacon, and shall first have subscribed the said Articles in Presence of the Ordinary, and publickly read the same in the Parish Church of that Benefice, with Declaration of his unfeigned Assent to the same; And that every Person after the End of this Session of Parliament, to be admitted to a Benefice with Cure, except that within Two Months after his Induction he do publickly read the said Articles in the same Church whereof he shall have Cure, in the Time of Common Prayer there, with Declaration of his unfeigned Assent thereunto, and be admitted to minister the Sacraments within One Year after his Induction, if he be not so admitted before, shall be upon every such Default, *ipso facto,* immediately deprived.

IV. And that no Person now permitted by any Dispensation or otherwise, shall obtain any Benefice with Cure, being under the Age of One and Twenty Years, or not being Deacon at the least, or which shall not be admitted as is aforesaid, within One Year next after the making of this Act, or within Six Months after he shall accomplish the Age of Four and Twenty Years, on Pain that such his Dispensation shall be merely void.

The Age of a Minister or Preacher, and his Testimonials
3 Bulstr. 90.
3 Mod. 67.
4 Mod. 135, 136.
2 Salk. 539.

V. And that none shall be made Minister, or admitted to preach or administer the Sacraments, being under the Age of Four and Twenty Years; nor unless he first bring to the Bishop of that Diocese, from Men known to the Bishop to be of sound Religion, a Testimonial both of his honest Life and of his professing the Doctrine expressed in the said Articles: Nor unless he be able to answer, and render to the Ordinary an Account of his Faith, in *Latin,* according to the said Articles, or have special Gift or Ability to be a Preacher: Nor shall be admitted to the Order of Deacon or Ministry, unless he shall first subscribe to the said Articles. (1)

Who may have a Benefice of the yearly Value of Thirty Pounds.

VI. And that none hereafter shall be admitted to any Benefice with Cure of or above the Value of Thirty Pounds yearly in the Queen's Books, unless he shall then be a Batchelor of Divinity, or a Preacher lawfully allowed by some Bishop within this Realm, or by One of the Universities of *Cambridge* or *Oxford.*

Admissions. Inductions Tolerations.

VII. And that all Admissions to Benefices, Institutions and Inductions, to be made of any Person contrary to the Form or any Provision of this Act, and all Tolerations, Dispensations, Qualifications and Licences whatsoever to be made to the contrary hereof, shall be merely void in Law, as if they never were.

No Lapse upon Deprivation, but after Notice. Dyer ..7

VIII. Provided alway, That no Title to confer or present by Lapse, shall accrue upon any Deprivation *ipso facto,* but after Six Months after Notice of such Deprivation given by the Ordinary to the Patron. 1 Roll 155.

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(1) The Provisions respecting Age are enforced by Stat. 44 Geo. III. c. 43, post No. 31.

No. 7.

31. Elizabeth, c. 6.—An Act against Abuses in Election of Scholars, and Presentation to Benefices.

'WHEREAS by the Intent of the Founders of Colleges, Churches 'Collegiate, Churches Cathedral, Schools, Hospitals, Halls 'and other like Societies within this Realm, and by the Statutes and 'good Orders of the same, the Elections, Presentations and Nominations of Fellows, Scholars, Officers and other Persons, to have Room 'or Place in the same, are to be had and made of the fittest and most 'meet Persons, being capable of the same Elections, Presentations 'and Nominations, freely, without any Reward, Gift or Thing given 'or taken for the same: And for true Performance whereof, some 'Electors, Presentors and Nominators in the same, have or should 'take a corporal Oath to make their Elections, Presentations and 'Nominations accordingly; yet notwithstanding it is seen and found 'by Experience, that the said Elections, Presentations and Nominations be many Times wrought and brought to pass with Money, 'Gifts and Rewards, whereby the fittest Persons to be elected, presented or nominated, wanting Money or Friends, are seldom or not 'at all preferred, contrary to the good Meaning of the said Founders, 'and the said good Statutes and Ordinances of the said Colleges, 'Churches, Schools, Halls, Hospitals and Societies, and to the great 'Prejudice of Learning, and the Commonwealth and Estate of the 'Realm:'

31 Eliz. c. 6. Elections, Presentations, &c. in Colleges, &c. wrought contrary to the Intent of the Founders. Cro. Jac. 533. 3 Inst. 152. 1 Roll. 157, 286. 2 Roll. 83. 167.

II. For Remedy whereof, be it enacted by the Queen's most excellent Majesty, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That if any Person or Persons, Bodies Politic or Corporate, which have Election, Presentation or Nomination, or Voice, or Assent in the Choice, Election, Presentation or Nomination of any Fellow, Scholar, or any other Person, to have Room or Place in any of the said Churches, Colleges, Schools, Hospitals, Halls or Societies, shall at any Time after Forty Days next after the End of this present Session of Parliament, have, receive or take any Money, Fee, Reward or any other Profit, directly or indirectly, or shall take any Promise, Agreement, Covenant, Bond or other Assurance to receive or have any Money, Fee, Reward or any other Profit, directly or indirectly, either to him or themselves, or to any other of their or any of their Friends, for his or their Voice or Voices, Assent or Assents, or Consents, in electing, chusing, presenting or nominating any Officer, Fellow, Scholar or other Person, to have any Room or Place in any of the said Churches, Colleges, Schools, Halls, Hospitals or Societies; that then and from thenceforth the Place, Room or Office which such Person so offending shall then have in any the said Churches, Colleges, Schools, Halls, Hospitals or Societies, shall be void: And that then, as well the Queen's Majesty, her Heirs and Successors, and every other Person and Persons, their Heirs and Successors, to whom the Presentation, Donation, Gift, Election, or Disposition shall of Right belong or appertain of any such of the said Rooms or Places of the said Person offending as aforesaid, shall or may at their Pleasure elect, present, nominate, place or appoint any other Person or Persons in the Room, Office or Place of such Person or Persons so offending, as if the said Person or Persons so offending then were naturally dead.

[illegible] 2 Bulstr. 182. 3 Bulstr. 88, 90. Moor 877. pl. 1231. Vin. V. 19, 404, &c. 1 Haw. P. C. 87 & 90. Hob. 75, 167. 1 Cro. 37. March 81.

III. And be it further enacted by the Authority aforesaid, That if any Fellow, Officer or Scholar of any the said Churches, Colleges, Schools, Halls, Hospitals or Societies, or other Persons having Room [...] Way, Device or Means, contract or agree to have or receive any Money, Reward or Profit whatsoever, for the leaving or resigning up

The Penalty for giving or taking of Money for resigning a Place in a College, Society, &c. Hob. 105

No. 7. 31 Eliz. c. 6.

of the same his Room or Place, for any other to be placed in the same, that then every Person so taking or contracting, or agreeing to take or have any Thing for the same, shall forfeit and lose double the Sum of Money or Value of the Thing so received and taken, or agreed to be received and taken; and every Person by whom or for whom any Money, Gift or Reward as aforesaid shall be given or agreed to be paid, shall be uncapable of that Place or Room for that Time or Turn; and shall not be, nor had nor taken to be a lawful Fellow, Scholar or Officer of any of the Churches, Colleges, Halls, Hospitals, Schools or Societies, or to have such Room or Place there, but that they to whom it shall appertain, at any Time thereafter, shall and may elect, chuse, present and nominate any other Person fit to be elected, presented and nominated into the said Room or Fellowship, as if the said Person by or for whom any such Money, Gift or Reward shall be given or agreed to be paid, were dead, or had resigned and left the same. And for more sincere Election, Choice, Presentation and Nomination of Fellows, Scholars, Officers and other Persons, to have Room or Place hereafter in any of the said Churches, Colleges, Halls, Schools, Hospitals, and other the like Societies;

At every Election this Statute, and the Statues of the House shall be read

IV. Be it further enacted by the Authority aforesaid, That at the Time of every such Election, Presentation, and Nomination hereafter to be had, as well this present Act as the Orders and Statutes of the same Places concerning such Election, Presentation, or Nomination to be had, shall then and there be publickly read, upon Pain that every Person in whom Default thereof shall be shall forfeit and lose the Sum of forty Pounds; all which Forfeitures shall and may be had and recovered in any Her Majesty's Courts of Record by any Person or Persons, Bodies Politick and Corporate, that will sue for the same, by Bill, Plaint, or Action of Debt, in which no Essoin, Protection, or Wager of Law shall be allowed: The one Moiety whereof shall be to him or them that will sue for the same; the other Moiety to the Use of the said Church, College, Hall, Hospital, School or Society where such Offence shall be committed, **And for the Avoiding of Simony** (1) and Corruption in Presentations, Collations and Donations of and to Benefices, Dignities, Prebends, and other Livings and Promotions Ecclesiastical, and in Admissions, Institutions, and Inductions to the same:

Who shall have the Forfeitures, and by what Means.

The Penalty for presenting to a Benefice, or for being presented for Reward

Coke Entr. 516.

V. Be it further enacted by the Authority aforesaid, That if any Person or Persons, Bodies Politick and Corporate, shall or do at any Time after the End of forty Days next after the End of this Session of Parliament, for any Sum of Money, Reward, Gift, Profit, or Benefit, directly or indirectly, or for or by Reason of any Promise, Agreement, Grant, Bond, (2) Covenant, or other Assurances, of or

(1) These and the following Words, which in all the Editions of the Statutes are printed as Part of the fourth Section, are the Preamble to the fifth. In consequence of not attending to this, it has been erroneously stated by several Writers, and some Judges, that the Word *Simony* does not occur in the Statute. See Burns' Ecc. Law. Art. SIMONY. The Division into Sections does not appear in the original Records, and is merely the Act of the Printer.

(2) It was established by several Cases, that a general Bond of Resignation was not void by this Statute, but Courts of Equity prevented such Bonds from being made an improper Use of; and it was laterly considered, that the Opinion in Favour of their Legality rested rather upon the Authority of established Precedents than upon a true Construction of the Statute. In the Case of the Bishop of London *v.* Ffytche, before the House of the Lords, in 1783, the Courts of Common Pleas and King's Bench decided in Favour of the Bond, but the Judgment was reversed contrary to the Opinion of the Majority of the Judges, but with the Concurrence of Lord Chancellor

for any Sum of Money, Reward, Gift, Profit or Benefit whatsoever, directly or indirectly, present or collate any Person to any Benefice with Cure of Souls, Dignity, Prebend or Living Ecclesiastical, or give or bestow the same, for or in Respect of any such corrupt Cause or Consideration; (3) That then every such Presentation, Collation, Gift, and Bestowing, and every Admission, Institution, Investure, and Induction thereupon, shall be utterly void, (4) frustrate, and of none Effect in Law. And that it shall and may be lawful to and for the Queen's Majesty, her Heirs and Successors, to present, collate unto, or give or bestow every such Benefice, Dignity, Prebend and Living Ecclesiastical for that one Time or Turn only; (5) and that all and every Person or Persons, Bodies Politick and Corporate, that from thenceforth shall give or take any such Sum of Money, Reward, Gift or Benefit, directly or indirectly, or that shall take or make any such Promise, Grant, Bond, Covenant or other Assurance, shall forfeit and lose the double Value (6) of One Year's Profit of every such Benefice, Dignity, Prebend and Living Ecclesiastical; and the Person so corruptly (7) taking, procuring, seeking or accepting any such Bene-

No. 7.
31 Eliz. c. 6.

3 Lev. 337.

Thurlow. A detailed Account of the Case was published by Mr. Cunningham, and the Opinions of some of the Judges, with the Speeches of some of the Bishops and the Lord Chancellor, are contained in Burns' Ecc. Law. Art. Simony. In Bagshaw v. Bossley, 4 T. R. 78, a Bond to resign in Case of Nonresidence or committing Waste on the Parsonage was sustained, Lord Kenyon said, "I avoid saying any Thing respecting the Case of the Bishop of London v. Ffytche, when that Question comes again before the House of the Lords, they will, I have no Doubt, review their former Decision, if it should become necessary. It is sufficient for me, in deciding the present Case, to say, that it cannot be governed by that." In Partridge v. Whiston, id. 359, upon a Bond to resign for the Patron's Son to be presented, the Court of B. R. understanding that it was intended to take the Case to the House of Lords, gave Judgment for the Plaintiff without Argument. They said as this was not precisely similar to the Case of the Bishop of London v. Ffytche, they were bound by the established Series of Precedents. It does not appear from the last Edition of Brown's P. C. that the Case came before the House of Lords. In Leigh v. Lewis, 1 East, 391, where a Bond of Resignation by a Schoolmaster was holden good, the Court referred to Ffytche v. the Bishop of London, as being founded solely upon the Authority of the Statute.

(3) An Inclosure Act recited it as uncertain whether the Chaplain or Curate were entitled to the several Tithes, or to a certain Money-payment, and declared that Nothing therein should affect such Right. The Inhabitants afterwards elected J. P. and entered into an Agreement, signed by him, for a certain Augmentation, and a Proviso that the Augmentation should be only made upon the Occupiers, and should not alter the Payment of ——— with which the Lands had immemoriably been charged. This was ruled to be Simoniacal, as intended to estop the Curate from insisting on his Right to Tithes, and to furnish Evidence against future Curates. Rex v. Bishop of Oxford, 7 East. 600. For other Cases of Simony see Com. Dig. Esglise. No. 3.

(4) This is held to mean not merely voidable, and a Simoniacal Presentation may be shewn as a Defence in a Suit for Tithes—3 Inst. 120—but a Tenant of the Glebe cannot, after Payment of Rent to the Incumbent, dispute his Title on the Ground of Simony.—Cooke v. Loxley, 5 T. R. 4. An important Case of Greenwood v. the Bishop of London has been decided, in the Court of Common Pleas, with Respect to the Grant of an Advouson being affected by Simony—Mic. 55 Geo. III.—which is not reported at the Time of printing this Sheet.

(5) But a Simoniacal Presentation by Usurpation does not authorize the King to present if a Prejudice to the rightful Patron. 3 Inst. 153.

(6) This is to be accounted the real Value, as formed by a Jury, and not the Valuation in the King's Books. 3 Inst. 154.

(7) If the Presentee is not privy to the Simony, he is not disabled from being presented upon another Vacancy, but if privy he is disabled for Life.—2 Hawk. 396—12 Co. 101.

No. 7.
31 Eliz. c. 6.

fice, Dignity, Prebend or Living, shall thereupon and from thenceforth be adjudged a disabled person in Law, to have or enjoy the same Benefice, Dignity, Prebend or Living Ecclesiastical.

The Penalty for presenting or collating, or for being presented to a Benefice with Cure for Reward.

2 Roll. 465.
Cro. Jac. 385.
Cro. Car. 330.

VI. And be it further enacted, That if any Person shall at any Time after Forty Days next after the End of this Session of Parliament, for any Sum of Money, Reward, Gift, Profit or Commodity whatsoever, directly or indirectly (other than for usual and lawful Fees) or for or by Reason of any Promise, Agreement, Grant, Covenant, Bond or other Assurance, of or for any Sum of Money, Reward, Gift, Profit or Benefit whatsoever, directly or indirectly, admit, institute, instal, induct, invest or place any Person in, or to any Benefice with Cure of Souls, Dignity, Prebend or other Living Ecclesiastical; that then every such Person so offending shall forfeit and lose double Value of One Year's profit of every such Benefice, Dignity, Prebend and Living Ecclesiastical; and that thereupon immediately from and after the Investing, Installation or Induction (8) thereof had, the same Benefice, Dignity, Prebend and Livings Ecclesiastical, shall be eftsoons merely void: And that the Patron or Person to whom the Advowson, Gift, Presentation or Collation shall by Law appertain, shall and may by virtue of this Act present or collate unto, give and dispose of the same Benefice, Dignity, Prebend or Living Ecclesiastical, in such Sort, to all Intents and Purposes, as if the party so admitted, instituted, installed, invested, inducted or placed, had been or were naturally dead.

No Title to confer by Lapse, but after six Months Notice.

VII. Provided always, That no Title to confer or present by Lapse shall accrue upon any Voidance mentioned in this Act, but after Six Months next after Notice given of such Voidance, by the Ordinary to the Patron.

The Penalty for corrupt resigning or exchanging of a Benefice with Cure of Souls.

VIII. And be it further enacted by the Authority aforesaid, That if any Incumbent of any Benefice with Cure of Souls, after the End of the said Forty Days, do or shall corruptly resign or exchange the same, or corruptly take for or in Respect of the Resigning or Exchanging of the same, directly or indirectly, any Pension, Sum of Money, or Benefit whatsoever; that then as well the Giver as the Taker of any such Pension, Sum of Money, or other Benefit corruptly, shall lose double the Value of the Sum so given, taken or had; the One Moiety as well thereof, as of the Forfeiture of double Value of One Year's Profit before mentioned, to be to the Queen's Majesty, her Heirs and Successors, and the other Moiety to him or them that will sue for the same, by Action of Debt, Bill or Information, in any of her Majesty's Courts of Record, in which no Essoin, Protection or Wager of Law or Privilege shall be admitted or allowed.

Penalties inflicted by the Ecclesiastical Law be not taken away by this Statute.

IX. Provided always, That this Act, or any Thing herein contained, shall not in any wise extend to take away or restrain any Punishment, Pain or Penalty limited, prescribed or instituted by the Laws Ecclesiastical, for any the Offences before in this Act mentioned, but that the same shall remain in Force, and may be put in due Execution, as it might be before the making of this Act; this Act or any Thing therein contained to the contrary thereof in any wise notwithstanding.

The Penalty for giving or taking of Rewards to make Ministers, to give Licence to preach.

X. Provided further, and be it enacted by the Authority aforesaid, That if any Person or Persons whatsoever shall or do at any Time after the End of this Session of Parliament, receive or take any Money, Fee, Reward or any other Profit, directly or indirectly, or shall take any Promise, Agreement, Covenant, Bond or other Assurance, to receive or have any Money, Fee, Reward or any other Profit,

(8) The Church does not become void by this Act till after Induction. 3 Inst. 155.

No. 7.
31 Eliz. c. 6.

directly or indirectly, either to him or themselves or to any other of their or any of their Friends, (all ordinary and lawful Fees only excepted) for or to procure the ordaining or making of any Minister or Ministers, or giving of any Orders, or Licence or Licences to preach; that then every person or persons so offending shall for every such Offence forfeit and lose the Sum of Forty Pounds of lawful Money of *England*, and the Party so corruptly ordained or made Minister, or taking Orders, shall forfeit and lose the Sum of Ten Pounds: And if at any Time within Seven Years next after such corrupt Entering into the Ministry, or receiving of Orders, he shall accept or take any Benefice, Living or Promotion Ecclesiastical, That then immediately from and after the Induction, Investing or Installation thereof or thereunto had, the same Benefice, Living and Promotion Ecclesiastical shall be eftsoons merely void; and that the Patron or the Person to whom the Advowson, Gift, Presentation or Collation shall by Law appertain, shall and may, by Virtue of this Act, present or collate unto, give and dispose of the same Benefice, Living or Promotion Ecclesiastical, in such Sort to all Intents and Purposes, as if the Party so Inducted, Invested or Installed, had been or were naturally dead; any Law, Ordinance, Qualification or Dispensation to the contrary notwithstanding: The one Moiety of all which Forfeitures shall be to our Sovereign Lady the Queen, her Heirs and Successors, and the other Moiety to him or them that will sue for the same, by Action of Debt, Bill, Plaint or Information, in any of her Majesty's Courts of Record, in which no Essoin, Protection, Privilege or Wager of Law, shall be admitted or allowed. Coke Lit. 120. a.

Who shall have the Forfeitures, and by what Means.

No. 8.

3 Jac. I. c. 5.—An Act to prevent and avoid Dangers which grow by Popish Recusants.

3 Jac. I. c. 5. sec. 18, 19, 20, 21

A Recusant shall not present to a Benefice, or grant an Advowson. Enlarged by 1 W. & M. Sess. 1. c. 26. and 12 Annæ, st. 2. c. 14.

XVIII. And be it further enacted by the Authority of this present Parliament, That every Person or Persons that is or shall be a Popish Recusant convict, during the Time that he shall be or remain a Recusant, shall from and after the End of this present Session of Parliament, be utterly disabled to present to any Benefice with Cure or without Cure, Prebend or any other Ecclesiastical Living, or to collate or nominate to any Free School, Hospital or Donative whatsoever, and from the Beginning of this present Session of Parliament, shall likewise be disabled to grant any Avoidance to any Benefice, Prebend or other Ecclesiastical Living.

The Chancellor and Scholars of Oxford shall present to a Recusant's Benefice in certain Counties. Jones 17.

XIX. And that the Chancellor and Scholars of the University of *Oxford*, so often as any of them shall be void, shall have the Presentation, Nomination, Collation and Donation of and to every such Benefice, Prebend or Ecclesiastical Living, School, Hospital and Donative, set, lying and being in the Counties of *Oxford*, *Kent*, *Middlesex*, *Sussex*, *Surrey*, *Hampshire*, *Berkshire*, *Buckinghamshire*, *Gloucestershire*, *Worcestershire*, *Staffordshire*, *Warwickshire*, *Wiltshire*, *Somersetshire*, *Devonshire*, *Cornwall*, *Dorsetshire*, *Herefordshire*, *Northamptonshire*, *Pembrokeshire*, *Caermarthenshire*, *Brecknockshire*, *Monmouthshire*, *Cardiganshire*, *Montgomeryshire*, the City of *London*, and in every City and Town, being a County of itself, lying and being within any of the Limits or Precincts of any of the Counties aforesaid, or in, or within any of them, as shall happen to be void during such Time as a Patron thereof shall be and remain a Recusant convict as aforesaid.

No. 8.
3 Jac. I. c. 5.

The Chancellor and Scholars of Cambridge.

XX. And that the Chancellor and Scholars of the University of *Cambridge*, shall have the Presentation, Nomination, Collation and Donation of and to every such Benefice, Prebend or Ecclesiastical Living, School, Hospital and Donative, set, lying and being in the Counties of *Essex*, *Hertfordshire*, *Bedfordshire*, *Cambridgeshire*, *Huntingdonshire*, *Suffolk*, *Norfolk*, *Lincolnshire*, *Rutlandshire*, *Leicestershire*, *Derbyshire*, *Nottinghamshire*, *Shropshire*, *Cheshire*, *Lancashire*, *Yorkshire*, the County of *Durham*, *Northumberland*, *Cumberland*, *Westmorland*, *Radnorshire*, *Denbishire*, *Flintshire*, *Carnarvonshire*, *Angleseyshire*, *Merionethshire*, *Glamorganshire*, and in every City and Town, being a County of itself, lying within any of the Limits or Precincts of any of the Counties last before mentioned, or in or within any of them, as shall happen to be void during such Time as the Patron thereof shall be and remain a Recusant convict as aforesaid.

None shall be presented who hath another Benefice.

XXI. Provided, That neither of the said Chancellors and Scholars of either of the said Universities, shall present or nominate to any Benefice with Cure, Prebend or other Ecclesiastical Living, any such Person as shall then have any other Benefice with Cure of Souls, and if any such Presentation or Nomination shall be had or made of any such Person so beneficed, the said Presentation or Nomination shall be utterly void; any Thing in this Act to the contrary notwithstanding.

No. 9.

13 & 14 Car. II. c. 4.—An Act for the Uniformity of publick Prayers, and Administration of Sacraments, and other Rites and Ceremonies; and for establishing the Form of making, ordaining, and consecrating Bishops, Priests, and Deacons, in the Church of *England* *

13 & 14 Car. II. c. 4.
This Act enforced by 5 Annæ, c. 5. sec. 1.

1 Eliz. c. 2.

'WHEREAS in the First Year of the late Queen ELIZABETH, there was One uniform Order of Common Service and Prayer, and of the Administration of Sacraments, Rites, and Ceremonies, in the Church of *England*, (agreeable to the Word of God, and Usage of the Primitive Church), compiled by the Reverend Bishops and Clergy, set forth in One Book, intituled, *The Book of Common Prayer, and Administration of Sacrament, and other Rites and Ceremonies in the Church of* England, and enjoined to be used by Act of Parliament, holden in the said First Year of the said late Queen, intituled, *An Act for the Uniformity of Common Prayer and Service in the Church, and Administration of the Sacraments,* (1) very comfortable to all good People desirous to live in Christian Conversation, and most profitable to the Estate of this Realm; upon the which the Mercy, Favour, and Blessing of Almighty God is in no wise so readily and plentifully poured, as by Common Prayers, due using of the Sacraments, and often preaching of the Gospel, with Devotion of the Hearers; and yet this notwithstanding, a great Number of People in divers parts of this Realm, following their own Sensuality, and living without Knowledge and due Fear of God, do

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* 17 & 18 Chas. II. Ir.

(1) It was not thought material to insert the Statute of 1 Eliz. c. 2, for the Uniformity of Common Prayer in this Class, but from the connection of some of its Provisions with the Criminal Law, it will be inserted, or more particularly noticed in the Class of Part 5, which relates to Offences against the Established Church.

wilfully and schismatically abstain and refuse to come to their parish Churches, and other publick places where Common Prayer, Administration of the Sacraments, and preaching of the Word of God is used upon the *Sundays* and other Days ordained and appointed to be kept and observed as Holy-days: And whereas by the great and scandalous Neglect of Ministers in using the said Order or Liturgy so 'set forth and enjoined as aforesaid, great Mischiefs and Inconveniences, during the Times of the late unhappy Troubles, have arisen and grown, and many people have been led into Factions and Schisms, to the great Decay and Scandal of the Reformed Religion of the Church of *England*, and to the Hazard of many Souls: For Prevention whereof in Time to come, for settling the Peace of the Church, and for allaying the present Distempers which the Indisposition of the Time hath contracted, the King's Majesty, according to his Declaration of the Five and Twentieth of *October*, One Thousand Six Hundred and Sixty, granted his Commission under the Great Seal of *England* to several Bishops and other Divines, to review the Book of Common Prayer, and to prepare such Alterations and Additions as they thought fit to offer: And afterwards the Convocations of both the Provinces of *Canterbury* and *York*, being by his Majesty called and assembled, and now sitting, his Majesty hath been pleased to authorize and require the Presidents of the said Convocations, and other the Bishops and Clergy of the same, to review the said Book of Common Prayer, and the Book of the Form and Manner of the Making and Consecrating of Bishops, Priests, and Deacons: And that after mature Consideration they should make such Additions and Alterations in the said Books respectively, as to them should seem meet and convenient; and should exhibit and present the same to his Majesty in Writing for his further Allowance or Confirmation: Since which Time, upon full and mature Deliberation, they the said Presidents, Bishops, and Clergy, of both Provinces, have accordingly reviewed the said Books, and have made some Alterations which they think fit to be inserted to the same; and some additional Prayers to the said Book of Common Prayer, to be used upon proper and emergent Occasions; and have exhibited and presented the same unto his Majesty in Writing, in One Book, intituled, *The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the Use of the Church of* England, *together with the Psalter or Psalms of* David, *pointed as they are to be sung or said in Churches; and the Form and Manner of Making, Ordaining, and Consecrating, of Bishops, Priests, and Deacons:* All which his Majesty having duly considered, hath fully approved and allowed the same, and recommended to this present Parliament, That the said Books of Common Prayer, and of the Form of Ordination and Consecration of Bishops, Priests, and Deacons, with the Alterations and Additions which have been so made and presented to his Majesty by the said Convocations, be the Book which shall be appointed to be used by all that officiate in all Cathedral and Collegiate Churches and Chapels, and in all Chapels of Colleges and Halls in both the Universities, and the Colleges of *Eaton* and *Winchsster*, and in all Parish Churches and Chapels within the Kingdom of *England*, Dominion of *Wales*, and Town of *Berwick upon Tweed*, and by all that make or consecrate Bishops, Priests, or Deacons, in any of the said places, under such Sanctions and Penalties as the Houses of Parliament shall think fit.

No. 9. 13 & 14 Car. II. c. 4.

The King's Declaration and Commission for reviewing the Book of Common Prayer, and Alterations to be propounded therein.

'II. Now in regard that nothing conduced more to the Settling of the Peace of this Nation, (which is desired of all good Men,) nor to the Honour of our Religion, and the Propagation thereof,

No. 9. 13 & 14 Car. II. c. 4.

The Peace and Honour of Religion much advanced by uniform Agreement in the public Worship of God.

'than an universal Agreement in the public Worship of Almighty 'God;' and to the Intent that every Person within this Realm may certainly know the Rule to which he is to conform in public Worship, and Administration of Sacraments, and other Rites and Ceremonies of the Church of *England*, and the Manner how and by whom Bishops, Priests, and Deacons, are and ought to be made, ordained, and consecrated; be it enacted by the King's most excellent Majesty, by the Advice and with the Consent of the Lord's Spiritual and Temporal, and of the Commons, in this present Parliament assembled, and by the Authority of the same, That all and singular Ministers in any Cathedral, Collegiate, or Parish Church or Chapel, or other Place of publick Worship within this Realm of *England*, Dominion of *Wales*, and Town of *Berwick-upon-Tweed*, shall be bound to say and use the Morning Prayer, Evening Prayer, Celebration and Administration of both the Sacraments, and all other the Publick and Common Prayer, in such Order and Form as is mentioned in the said Book annexed and joined to this present Act, and intituled, *The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the Use of the Church of* England; *together with the Psalter or Psalms of* David; *pointed as they are to be sung or said in Churches; and the Form or Manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons:* And that the Morning and Evening Prayers therein contained shall, upon every Lord's Day, and upon all other Days and Occasions, and at the Times therein appointed, be openly and solemnly read by all and every Minister or Curate, in every Church, Chapel, or other Place of publick Worship, within this Realm of *England* and Places aforesaid.

The Book of Common Prayer shall be used

All Parsons, Vicars, and Ministers to read and declare their Assent to use the same.

III. And to the End that Uniformity in the publick Worship of God (which is so much desired) may be speedily effected, be it further enacted by the Authority aforesaid, That every Parson, Vicar, or other Minister whatsoever, who now hath and enjoyeth any Ecclesiastical Benefice or Promotion within this Realm of *England* or Places aforesaid, shall, in the Church, Chapel, or Place of publick Worship, belonging to his said Benefice or Promotion, upon some Lord's Day before the Feast of *St. Bartholomew*, which shall be in the Year of our Lord God one thousand six hundred sixty and two, openly, publickly, and solemnly read the Morning and Evening Prayer appointed to be read by and according to the said Book of Common Prayer, at the Times thereby appointed; and after such Reading thereof, shall openly and publickly, before the Congregation there assembled, declare his unfeigned Assent and Consent to the Use of all Things in the said Book contained and prescribed, in these Words, and no other.

'IV. I *A. B.* do here declare my unfeigned Assent and Consent to all 'and every Thing contained and prescribed in and by the Book, 'intituled, *The Book of Common Prayer and Administration of the 'Sacraments, and other Rites and Ceremonies of the Church, according to the Use of the Church of* England; *together with the Psalter 'or Psalms of* David, *pointed as they are to be sung or said in 'Churches; and the Form or Manner of making, ordaining, and con'secrating of Bishops, Priests, and Deacons.*'

The Penalty for refusing. 23 Geo. II. c. 28.

V. And that all and every such Person, who shall (without some lawful Impediment to be allowed and approved of by the Ordinary of the place) neglect or refuse to do the same within the Time aforesaid, (or in case of such Impediment, within One Month after such Impediment removed,) shall *ipso facto* be deprived of all his Spiritual

Promotions: And that from thenceforth it shall be lawful to and for all Patrons and Donors of all and singular the said Spiritual Promotions, or of any of them, according to their respective Rights and Titles, to present or collate to the same, as though the Person or Persons so offending or neglecting were dead. (2)

No. 9. 13 & 14 Car. II. c. 4.

VI. And be it further enacted by the Authority aforesaid, That every Person who shall hereafter be presented or collated, or put into any Ecclesiastical Benefice or Promotion within this Realm of *England* and Places aforesaid, shall, in the Church, Chapel, or Place of Publick Worship belonging to his said Benefice or Promotion, within Two Months next after that he shall be in the actual Possession of the said Ecclesiastical Benefice or Promotion, upon some Lord's Day, openly, publickly, and solemnly read the Morning and Evening Prayers appointed to be read by and according to the said Book of Common Prayer, at the Times thereby appointed; and after such Reading thereof shall openly and publickly, before the Congregation there assembled, declare his unfeigned Assent and Consent to the Use of all Things therein contained and prescribed, according to the Form before appointed: And that all and every such Person who shall (without some lawful Impediment to be allowed and approved by the Ordinary of the Place) neglect or refuse to do the same within the Time aforesaid, (or in case of such Impediment, within One Month after such Impediment removed) shall *(ipso facto)* be deprived of all his said Ecclesiastical Benefices and Promotions: And that from thenceforth it shall and may be lawful to and for all Patrons and Donors of all and singular the said Ecclesiastical Benefices and Promotions, or any of them, according to their respective Rights and Titles, to present or collate to the same, as though the Person or Persons so offending or neglecting were dead.

Every Parson shall read the Common Prayer and declare his Assent thereto.

The Penalty for not so doing. 2 Show. 53.

VII. And be it further enacted by the Authority aforesaid, That in all Places where the proper Incumbent of any Parsonage or Vicarage, or Benefice with Cure, doth reside on his Living and keep a Curate, the Incumbent himself in person (not having some lawful Impediment to be allowed by the Ordinary of the Place) shall once (at the least) in every Month openly and publickly read the Common Prayers and Service in and by the said Book prescribed, and (if there be Occasion) administer each of the Sacraments and other Rites of the Church, in the Parish Church or Chapel, of or belonging to the same Parsonage, Vicarage, or Benefice, in such Order, Manner, and Form,

Incumbents of Livings, keeping Curates, shall read the same once every Month.

(2) In Powel *v.* Milbank, 2 Bl. Rep. 851, which was an Action for Money had and received to try the Title of the Plaintiff as Incumbent of a Donative.—Two questions were made—1st, Whether an Incumbent of a Donative were obliged to conform to this Statute and 13 Eliz. (supra No. 6,) as to which the Court strongly inclined to think in the affirmative, observing, that the point seemed to have been settled in Carver *v.* Pinkney, 3 Leo. 82. 2dly, Whether it were necessary for him to give Evidence in that Action that he had complied with the Statutes, upon which the Court were of Opinion, that as no Evidence had been given by the Defendant to raise a doubt whether the Plaintiff had subscribed, &c. it was not incumbent on him to give evidence of his having actually done so. The Presumption (said De Grey, C. J.) always is, that every Man conforms to the Laws, and that Presumption shall stand till Something appears to shake it; nor is the Defendant hereby put upon proving a direct Negative.—It is a Negative qualified with Circumstances.—Some of these Ceremonies are to be performed publicly within a limited Time, Registers are kept of the others. And if Evidence had been given that a Person had regularly attended the Church and heard Nothing of this matter, or if a Search had been made in the Bishop's Register and Nothing had been found therein, this would have destroyed the Presumption, and put the Plaintiff on the Proof of his having performed these Requisites.—S. C. by the name of Powell *v.* Milburn, 2 Wils. 155.

No. 9. 13 & 14 Car. II. c. 4.

Penalty and Manner of Conviction for not doing it.

as in and by the said Book is appointed; upon Pain to forfeit the Sum of Five Pounds to the Use of the Poor of the Parish for every Offence, upon Conviction by Confession, or Proof of Two credible Witnesses, upon Oath, before Two Justices of the Peace of the County, City, or Town Corporate, where the Offence shall be committed, (which Oath the said Justices are hereby impowered to administer) and in Default of Payment within Ten Days, to be levied by Distress and Sale of the Goods and Chattels of the Offender, by the Warrant of the said Justices, by the Churchwardens, or Overseers of the Poor of the said parish, rendering the Surplusage to the party.

Deans, &c. shall subscribe the Declaration. 15 Car. 2, c. 6. See 12 Annæ, Stat. 2, c. 7.

VIII. And be it further enacted by the Authority aforesaid, That every Dean, Canon, and Prebendary of every Cathedral or Collegiate Church, and all Masters and other Heads, Fellows, Chaplains, and Tutors of or in any College, Hall, House of Learning or Hospital, and every publick Professor and Reader in either of the Universities, and in every College elsewhere, and every Parson, Vicar, Curate, Lecturer, and every other Person in Holy Orders, and every Schoolmaster keeping any publick or private School, and every Person instructing or teaching any Youth in any House or private Family as a Tutor or School-master, who upon the First Day of *May*, which shall be in the Year of our Lord God One Thousand Six Hundred Sixty-Two, or at any Time thereafter, shall be Incumbent or have Possession of any Deanery, Canonry, Prebend, Mastership, Headship, Fellowship, Professor's place or Reader's place, Parsonage, Vicarage, or any other Ecclesiastical Dignity or Promotion, or of any Curate's Place, Lecture, or School, or shall instruct or teach any Youth as Tutor or School-master, shall, before the Feast Day of Saint *Bartholomew*, which shall be in the Year of our Lord One Thousand Six Hundred Sixty-two, or at or before his or their respective Admission to the Incumbent or have possession aforesaid, subscribe the Declaration or Acknowledgment following, *Scilicet*,

See 19 Geo. III. c. 44. 52 G. III. c. 155. [Post Part 5.]

The Declaration. The Part included in Brackets abolished by 1 W. & M. Sess. 1, c. 8, sec. 11.

'IX. [I *A. B.* do declare, That it is not lawful, upon any Pretence whatsoever, to take Arms against the King; and that I do abhor that Traiterous position of taking Arms by his Authority against his Person, or against those that are commissionated by him] and that I will conform to the Liturgy of the Church of *England*, as it is now by Law established: And I do declare that I do hold, there lies no Obligation upon me or on any other Person, from the Oath commonly called, The Solemn League and Covenant, to endeavour any Change or Alteration of Government either in Church or State; and that the same was in itself an unlawful Oath, and imposed upon the Subjects of this Realm against the known Laws and Liberties of this Kingdom.'

X. Which said Declaration and Acknowledgment shall be subscribed by every of the said Masters and other Heads, Fellows, Chaplains, and Tutors of or in any College, Hall, or House of Learning, and by every Publick Professor and Reader in either of the Universities, before the Vice-Chancellor of the respective Universities for the Time being, or his Deputy. And the said Declaration or Acknowledgment shall be subscribed before the respective Archbishop, Bishop, or Ordinary of the Diocese, by every other Person hereby enjoined to subscribe the same; upon Pain that all and every of the Persons aforesaid failing in such Subscription, shall lose and forfeit such respective Deanry, Canonry, Prebend, Mastership, Headship, Fellowship, Professor's Place, Reader's Place, Parsonage, Vicarage, Ecclesiastical Dignity or Promotion, Curate's Place, Lecture, and School, and shall be utterly disabled and *(ipso facto)* deprived of the same:

The Penalty for not subscribing.

No. 9.
13 & 14 Car. II, c. 4.

And that every such respective Deanry, Canonry, Prebend, Mastership, Headship, Fellowship, Professor's Place, Reader's Place, Parsonage, Vicarage, Ecclesiastical Dignity or Promotion, Curate's Place, Lecture and School, shall be void, as if such Person so failing were naturally dead.

Schoolmasters in private Houses. But see Stat. 19, Geo III c. 44, Sec 2 [Post Pt. ...]

XI And if any School-master or other Person, instructing or teaching Youth in any private House or Family as a Tutor or School-master, shall instruct or teach any Youth as a Tutor or School-master before Licence obtained from his respective Archbishop, Bishop, or Ordinary of the Diocese, according to the Laws and Statutes of this Realm, (for which he shall pay Twelve-pence only) and before such Subscription and Acknowledgment made as aforesaid; then every such School-master and other, instructing and teaching as aforesaid, shall, for the first Offence, suffer Three Months Imprisonment without Bail or Mainprize; and for every Second, and other such Offence, shall suffer Three Months Imprisonment without Bail or Mainprize; and also forfeit to His Majesty the Sum of Five Pounds: And after such Subscription made, every such Parson, Vicar, Curate, and Lecturer, shall procure a Certificate under the Hand and Seal of the respective Archbishop, Bishop, or Ordinary of the Diocese, (who are hereby enjoined and required, upon Demand, to make and deliver the same) and shall publickly and openly read the same, together with the Declaration or Acknowledgment aforesaid, upon some Lord's Day within Three Months then next following, in his Parish Church where he is to officiate, in the presence of the Congregation there assembled, in the Time of Divine Service; upon Pain that every Person failing therein shall lose such Parsonage, Vicarage, or Benefice, Curate's Place, or Lecturer's Place respectively, and shall be utterly disabled, and *ipso facto* deprived of the same; and that the said Parsonage, Vicarage, or Benefice, Curate's Place or Lecturer's Place, shall be void as if he was naturally dead.

What to be omitted in the Declaration after the 25th of March, 1682.

XII. Provided always, That from and after the Twenty-fifth Day of *March*, which shall be in the Year of our Lord God One Thousand Six Hundred Eighty-Two, there shall be omitted in the said Declaration or Acknowledgment so to be subscribed and read, these Words following, *scilicet*:

'AND I do declare, that I do hold there lies no Obligation on me, 'or on any other Person, from the Oath commonly called, The 'Solemn League and Covenant, to endeavour any Change or Alteration 'of Government either in Church or State, and that the same was in 'itself an unlawful Oath, and imposed upon the Subjects of this Realm 'against the known Laws and Liberties of this Kingdom.'

So as none of the Persons aforesaid shall from thenceforth be at all obliged to subscribe or read that Part of the said Declaration or Acknowledgment.

Persons not ordained according to Episcopal Ordination shall not hold any Ecclesiastical Promotion, &c.

XIII. Provided always, and be it enacted, That from and after the Feast of *St. Bartholomew*, which shall be in the Year of our Lord one thousand six hundred sixty and two, no Person who is now Incumbent, and in Possession of any Parsonage, Vicarage, or Benefice, and who is not already in Holy Orders by Episcopal Ordination, or shall not before the said Feast Day of *St. Bartholomew* be ordained Priest or Deacon, according to the Form of Episcopal Ordination, shall have, hold, or enjoy the said Parsonage, Vicarage, Benefice with Cure; or other Ecclesiastical Promotion within this Kingdom of *England*, or the Dominion of *Wales*, or Town of *Berwick upon Tweed*, but shall be utterly disabled, and *(ipso facto)* deprived of the same, and all his Ecclesiastical Promotions shall be void, as if he was naturally dead.

No. 9.
13 & 14 Car. II. c. 4.

XIV. And be it further enacted by the Authority aforesaid, That no Person whatsoever shall thenceforth be capable to be admitted to any Parsonage, Vicarage, Benefice, or other Ecclesiastical Promotion or Dignity whatsoever, nor shall presume to consecrate and administer the Holy Sacrament of the Lord's Supper, before such Time as he shall be ordained Priest according to the Form and Manner in and by the said Book prescribed, unless he have formerly been made Priest by Episcopal Ordination; upon pain to forfeit for every Offence the Sum of One Hundred Pounds; one Moiety thereof to the King's Majesty, the other Moiety thereof to be equally divided between the Poor of the Parish where the Offence shall be committed; and such Person or Persons as shall sue for the same by Action of Debt, Bill, Plaint, or Information, in any of his Majesty's Courts of Record, wherein no Essoin, Protection, or Wager of Law shall be allowed, and to be disabled from taking or being admitted into the Order of Priest, by the Space of One whole Year then next following.

XV. Provided that the Penalties in this Act shall not extend to the Foreigners or Aliens of the Foreign Reformed Churches allowed or to be allowed by the King's Majesty, his Heirs and Successors in *England*.

XVI. Provided always, That no Title to confer or present by Lapse, shall accrue by any Avoidance or Deprivation *(ipso facto)* by Virtue of this Statute, but after Six Months after Notice of such Avoidance or Deprivation given by the Ordinary to the Patron, or such Sentence of Deprivation openly and publicly read in the Parish Church of the Benefice, Parsonage, or Vicarage becoming void, or whereof the Incumbent shall be deprived by Virtue of this Act.

No other Form of Common Prayer to be openly used in any Church or public Place.

XVII. And be it further enacted by the Authority aforesaid, That no Form or Order of Common Prayers, Administration of Sacraments, Rites or Ceremonies, shall be openly used in any Church, Chapel, or other public Place of or in any College or Hall in either of the Universities, the Colleges of *Westminster*, *Winchester*, or *Eaton*, or any of them, other than what is prescribed and appointed to be used in and by the said Book; and that the present Governor or Head of every College and Hall in the said Universities, and of the said Colleges of *Westminster*, *Winchester*, and *Eaton*, within One Month after the Feast of *St. Bartholomew*, which shall be in the Year of our Lord One thousand six hundred sixty and two; and every Governor or Head of any of the said Colleges or Halls hereafter to be elected or appointed, within one Month next after his Election or Collation, and Admission into the same Government or Headship, shall openly and publicly in the Church, Chapel, or other public Place of the same College or Hall, and in the presence of the Fellows and Scholars of the same, or the greater Part of them then resident, subscribe unto the nine and thirty Articles of Religion, mentioned in the Statute made in the Thirteenth Year of the late Queen *Elizabeth*, and unto the said Book, and declare his unfeigned Assent and Consent unto, and Approbation of, the said Articles, and of the same Book, and to the Use of all the Prayers, Rites, and Ceremonies, Forms and Orders, in the said Book prescribed and contained, according to the Form aforesaid; and that all such Governors or Heads of the said Colleges and Halls, or any of them, as are or shall be in Holy Orders, shall once (at least) in every Quarter of the Year (not having a lawful Impediment), openly and publicly read the Morning Prayer and Service in and by the said Book appointed to be read in the Church, Chapel, or other Public Place of the same College or Hall; upon Pain to lose, and be suspended of and from all the Benefits and Profits belonging to the same Government or Headship, by the Space of six Months, by the Visitor or Visitors of the same College or Hall; and if any Governor or Head of any

Subscription to the thirty-nine Articles mentioned in the Stat. 13 Eliz. c. 12.

College or Hall, suspended for not subscribing unto the said Articles and Book, or for not reading of the Morning Prayer and Service as aforesaid, shall not at or before the End of six Months next after such Suspension, subscribe unto the said Articles and Book, and declare his Consent thereunto as aforesaid, or read the Morning Prayer and Service as aforesaid, then such Government or Headship shall be *(ipso facto)* void. No 9. 13 & 14 Car. II. c. 4.

XVIII. Provided always, That it shall and may be lawful to use the Morning and Evening Prayer, and all other Prayers and Service prescribed in and by the said Book, in the Chapels or other Public Places of the respective Colleges and Halls in both the Universities, in in the Colleges of *Westminster*, *Winchester*, and *Eaton*, and in the Convocations of the Clergies of either Province, in Latin; any Thing in this Act contained to the contrary notwithstanding. Who may use the Service in Latin.

XIX. And be it further enacted by the Authority aforesaid, That no Person shall be or be received as a Lecturer, or permitted, suffered, or allowed to preach as a Lecturer, or to preach or read any Sermon or Lecture in any Church, Chapel, or other Place of public Worship, within this Realm of *England*, or the Dominion of *Wales*, and Town of *Berwick upon Tweed*, unless he be first approved, and thereunto licensed by the Archbishop of the Province or Bishop of the Diocese, or (in case the See be void) by the Guardian of the Spiritualties, under his Seal, and shall in the Presence of the same Archbishop or Bishop, or Guardian, read the nine and thirty Articles of Religion mentioned in the Statute of the thirteenth Year of the late Queen *Elizabeth*, with Declaration of his unfeigned Assent to the same; and that every Person or Persons who now is, or hereafter shall be licenced, assigned, and appointed, or received as a Lecturer, to preach upon any Day of the Week in any Church, Chapel, or Place of Public Worship within this Realm of *England*, or Places aforesaid, the first Time he preacheth (before his Sermon) shall openly, publicly, and solemnly read the Common Prayers and Service in and by the said Book appointed to be read for that Time of the Day, and then and there publicly and openly declare his Assent unto, and Approbation of, the said Book, and to the Use of all the Prayers, Rites, and Ceremonies, Forms and Orders therein contained and prescribed, according to the Form before appointed in this Act: And also shall upon the first Lecture Day of every Month afterwards, so long as he continues Lecturer or Preacher there, at the Place appointed for his said Lecture or Sermon, before his said Lecture or Sermon, openly, publicly, and solemnly read the Common Prayers and Service in and by the said Book appointed to be read for that Time of the Day at which the said Lecture or Sermon is to be preached, and after such reading thereof shall openly and publicly, before the Congregation there assembled, declare his unfeigned Assent and Consent unto, and Approbation of, the said Book, and to the Use of all the Prayers, Rites, and Ceremonies, Forms and Orders, therein contained and prescribed, according to the Form aforesaid; and that all and every such Person and Persons who shall neglect or refuse to do the same, shall from thenceforth be disabled to preach the said or any other Lecture or Sermon in the said or any other Church, Chapel, or Place of public Worship, until such Time as he and they shall openly, publicly, and solemnly read the Common Prayers and Service appointed by the said Book, and conform in all Points to the Things therein appointed and prescribed, according to the Purport, true Intent, and Meaning of this Act. Lectures. 13 Eliz. c. 12.

XX. Provided always, That if the said Sermon or Lecture be to be preached or read in any Cathedral or Collegiate Church or Chapel, it shall be sufficient for the said Lecturer, openly at the Time afore- Lectures in Cathedral or Collegiate Churches.

No. 9. 13 & 14 Car. II. c. 4

said, to declare his Assent and Consent to all Things contained in the said Book, according to the Form aforesaid.

The Penalty upon Persons disabled that preach. Explained by 15 Car. II. c. 6 §7.

XXI. And be it further enacted by the Authority aforesaid, That if any Person who is by this Act disabled to preach any Lecture or Sermon, shall, during the Time that he shall continue and remain so disabled, preach any Sermon or Lecture; that then for every such Offence, the Person and Persons so offending shall suffer Three Months Imprisonment in the Common Gaol without Bail or Mainprize; and that any Two Justices of the Peace of any County of this Kingdom and Places aforesaid, and the Mayor or other Chief Magistrate of any City or Town Corporate within the same, upon Certificate from the Ordinary of the Place made to him or them of the Offence committed, shall and are hereby required to commit the Person or Persons so offending, to the Gaol of the same County, City, or Town Corporate accordingly.

Common Prayer to be read before every Lecture, and the Lecturer to be present.

XXII. Provided always, and be it further enacted by the Authority aforesaid, That at all and every Time and Times when any Sermon or Lecture is to be preached, the Common Prayers and Service in and by the said Book appointed to be read for that Time of the Day, shall be openly, publickly, and solemnly read by some Priest or Deacon, in the Church, Chapel, or Place of publick Worship, where the said Sermon or Lecture is to be preached, before such Sermon or Lecture be preached, and that the Lecturer then to preach shall be present at the Reading thereof.

Proviso for Sermons and Lectures in the Universities.

XXIII. Provided nevertheless, That this Act shall not extend to the University Churches in the Universities of this Realm, or either of them, when or at such Times as any Sermon or Lecture is preached or read in the said Churches, or any of them, for or as the publick University Sermon or Lecture; but that the same Sermons and Lectures may be preached or read in such Sort and Manner as the same have been heretofore preached or read; this Act, or any Thing herein contained to the contrary thereof in anywise notwithstanding.

Statutes formerly made for Uniformity of Common Prayer, confirmed, &c.

XXIV. And be it further enacted by the Authority aforesaid, That the several good Laws and Statutes of this Realm, which have been formerly made, and are now in Force, for the Uniformity of Prayer and Administration of the Sacraments, within this Realm of *England* and Places aforesaid, shall stand in full Force and Strength, to all Intents and Purposes whatsoever, for the establishing and confirming of the said Book, intituled, *The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the Use of the Church of* England; *together with the Psalter or Psalms of* David, *pointed as they are to be sung or said in Churches, and the Form or Manner of making, ordaining, and consecrating of Bishops, Priests and Deacons,* herein before mentioned to be joined and annexed to this Act, and shall be applied, practised and put in use for the punishing of all Offences contrary to the said Laws, with relation to the Book aforesaid, and no other.

Litanies, &c. relating to the King, &c.

XXV. Provided always, and be it further enacted by the Authority aforesaid, That in all those Prayers, Litanies and Collects, which do any way relate to the King, Queen, or Royal Progeny, the Names be altered and changed from Time to Time, and fitted to the present Occasion, according to the Direction of lawful Authority.

True Copies of the Book of Common Prayer to be provided in all Churches, &c.

XXVI. Provided also, and be it enacted by the Authority aforesaid, That a true printed Copy of the said Book, intituled, *The Book of Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church, according to the Use of the Church of* England, *together with the Psalter or Psalms of* David, *pointed as they are to be sung or said in Churches, and the Form and*

Manner of making, ordaining, and consecrating of Bishops, Priests and Deacons, shall at the Costs and Charges of the Parishioners of every Parish Church and Chapelry, Cathedral Church, College and Hall, be attained and gotten before the Feast-day of St. *Bartholomew*, in the Year of our Lord One Thousand Six Hundred Sixty and Two; upon Pain of Forfeiture of Three Pounds by the Month, for so long Time as they shall then after be unprovided thereof, by every Parish or Chapelry, Cathedral Church, College and Hall, making Default therein.

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Proviso for the Bishops of Hereford, &c.

XXVII. Provided always, and be it enacted by the Authority aforesaid, That the Bishops of *Hereford, St. David's, Asaph, Bangor*, and *Landaff*, and their Successors, shall take such Order among themselves, for the Souls Health of the Flocks committed to their Charge within *Wales*, that the Book hereunto annexed be truly and exactly translated into the *British* or *Welsh* Tongue; and that the same so translated, and being by them, or any Three of them at the least, viewed, perused and allowed, be imprinted to such Number at least, so that one of the said Books so translated and imprinted, may be had for every Cathedral, Collegiate and Parish Church, and Chapel of Ease, in the said respective Dioceses and Places in *Wales*, where the *Welsh* is commonly spoken or used, before the First Day of *May*, One Thousand Six Hundred Sixty-five; and that from and after the imprinting and publishing of the said Book so translated, the whole Divine Service shall be used and said by the Ministers and Curates throughout all *Wales* within the said Dioceses, where the *Welsh* Tongue is commonly used, in the *British* or *Welsh* Tongue, in such Manner and Form as is prescribed according to the Book hereunto annexed to be used in the *English* Tongue, differing nothing in any Order or Form from the said *English* Book; for which Book, so translated and imprinted, the Churchwardens of every the said Parishes shall pay out of the Parish Money in their Hands for the Use of the respective Churches, and be allowed the same on their Account; and that the said Bishops and their Successors, or any Three of them at the least, shall set and appoint the Price for which the said Book shall be sold: And one other Book of Common Prayer in the *English* Tongue shall be bought and had in every Church throughout *Wales*, in which the Book of Common Prayer in *Welsh* is to be had by Force of this Act, before the First Day of *May*, One Thousand Six Hundred Sixty and Four, and the same Books to remain in such convenient places within the said Churches, that such as understand them may resort at all convenient Times to read and peruse the same, and also such as do not understand the said Language, may, by conferring both Tongues together, the sooner attain to the Knowledge of the *English* Tongue; any Thing in this Act to the contrary notwithstanding: And until printed Copies of the said Book so to be translated may be had and provided, the Form of Common Prayer, established by Parliament before the making of this Act, shall be used as formerly in such Parts of *Wales* where the *English* Tongue is not commonly understood.

True Copies of this Act, and the Book of Common Prayer, by whom, and how to be had and kept.

XXVIII. And to the end that the true and perfect Copies of this Act, and the said Book hereunto annexed, may be safely kept and perpetually preserved, and for the avoiding of all Disputes for the Time to come; be it therefore enacted by the Authority aforesaid, That the respective Deans and Chapters of every Cathedral or Collegiate Church within *England* and *Wales* shall, at their proper Costs and Charges, before the Twenty-fifth Day of *December*, one thousand six hundred sixty and two, obtain under the Great Seal of *England* a true and perfect printed Copy of this Act, and of the said Book annexed hereunto, to be by the said Deans and Chapters, and their Successors,

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kept and preserved in Safety for ever, and to be also produced and shewed forth in any Court of Record, as often as they shall be thereunto lawfully required; and also there shall be delivered true and perfect Copies of this Act, and of the same Book, into the respective Courts at *Westminster*, and into the Tower of *London*, to be kept and preserved for ever among the Records of the said Courts, and the Records of the Tower, to be also produced and shewed forth in any Court, as Need shall require; which said Books so to be exemplified under the Great Seal of *England*, shall be examined by such Persons as the King's Majesty shall appoint, under the Great Seal of *England*, for that Purpose, and shall be compared with the Original Book hereunto annexed, and shall have power to correct and amend in Writing any Error committed by the Printer in the Printing of the same Book, or of any Thing therein contained, and shall certify in Writing under their Hands and Seals, or the Hands and Seals of any three of them, at the End of the same Book, that they have examined and compared the same Book, and find it to be a true and perfect Copy; which said Books, ond every one of them, so exemplified under the Great Seal of *England* as aforesaid, shall be deemed, taken, adjudged and expounded to be good and available in the Law, to all Intents and Purposes whatsoever, and shall be accounted as good Records as this Book itself hereunto annexed; any Law or Custom to the contrary in any wise notwithstanding.

Proviso for the King's Professor of Law in Oxford.

XXIX. Provided also, That this Act nor any Thing therein contained, shall not be prejudicial or hurtful unto the King's Professor of the Law within the University of *Oxford*, for or concerning the Prebend of *Shipton* within the Cathedral Church of *Sarum*, united and annexed unto the Place of the same King's Professor for the Time being by the late King *James* of blessed Memory.

Proviso concerning the 36th Article agreed in the Convocation, Anno 1562.

XXX. Provided always, That whereas the Six and Thirtieth Article of the Nine and Thirty Articles agreed upon by the Archbishops and Bishops of both Provinces, and the whole Clergy, in the Convocation holden at *London* in the Year of our Lord One Thousand Five Hundred Sixty-two, for the avoiding of Diversities of Opinions, and for establishing of Consent touching true Religion, is in these Words following, *viz.*

" That the Book of Consecration of Archbishops and Bishops, " and Ordaining of Priests and Deacons, lately set forth in the Time " of King EDWARD the Sixth, and confirmed at the same Time by " Authority of Parliament, doth contain all Things necessary to such " Consecration and Ordaining, neither hath it any Thing that of itself " is superstitious and ungodly: And therefore whosoever are conse" crated or ordered according to the Rites of that Book, since the " Second Year of the aforenamed King EDWARD unto this Time, or " hereafter shall be consecrated or ordered according to the same " Rites, We decree all such to be rightly, orderly and lawfully con" secrated and ordered;"

XXXI. It be enacted, and be it therefore enacted by the Authority aforesaid, That all Subscriptions hereafter to be had or made unto the said Articles by any Deacon Priest or Ecclesiastical Person, or other Person whatsoever, who by this Act, or any other Law now in Force, is required to subscribe unto the said Articles, shall be construed, and be taken to extend, and shall be applied (for and touching the said Six and Thirtieth Article) unto the Book containing the Form and Manner of Making, Ordaining and Consecrating of Bishops, Priests and Deacons, in this Act mentioned, in such Sort and Manner as the same did heretofore extend unto the Book set forth in the

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Time of King EDWARD the Sixth, mentioned in the said Six and Thirtieth Article; any Thing in the said Article, or in any Statute, Act or Canon heretofore had or made, to the contrary thereof in any wise notwithstanding.

The Common Prayer used by Authority of Parliament, 1 Eliz. c. 2. 8 Eliz. c. 1. to be used until Bartholomew Day 1662, EXP.

XXXII. Provided also, That the Book of Common Prayer, and Administration of the Sacraments, and other Rites and Ceremonies of this Church of *England*, together with the Form and Manner of ordaining and consecrating Bishops, Priests and Deacons, heretofore in Use, and respectively established by Act of Parliament in the First and Eighth Years of Queen ELIZABETH, shall be still used and observed in the Church of *England*, until the Feast of Saint *Bartholomew*, which shall be in the Year of our Lord God One Thousand Six Hundred Sixty and Two. EXP. as to this last Clause.

No. 10.

25 Car. II. c. 6.—An Act for Relief of such Persons as by Sickness, or other Impediment, were disabled from subscribing the Declaration in the Act of Uniformity; and Explanation of Part of the said Act.

10.

25 Car. II. c. 6, Sec. 7. Persons prohibited to preach. 13 & 14 C. c. 4.

'VII. And whereas some Doubt hath arisen, whether Persons 'prohibited to preach by the said Act are in the same Plight as to 'Punishment, with Persons disabled by the said Act to preach;' be it declared and enacted by the Authority aforesaid, That the Penalties by the said Act to be inflicted upon any Person disabled by the said Act to preach, for any Offence against the said Act, shall in like Manner be inflicted upon every Person so offending, that is prohibited by the said Act to preach; any Thing, Doubt, or Ambiguity in the said Act to the contrary notwithstanding.

No. 11.

27 Car. II. c. 3.—An Act for uniting Churches in Cities and Towns Corporate.

27 Car. II. c.

27 H. VIII. c. 21. Farther provided for by 4th and 5th W. and M. c. 12.

'FORASMUCH as the settled Provision for Ministers in most 'Cities and Towns Corporate within this Realm is not sufficient 'for the Maintenance of able Ministers fit for such Places, whereby 'mean and stipendiary Preachers are entertained to serve the Cures 'there; who, wholly depending for their Maintenance upon the 'Good-will and Liking of their Auditors, have been and are thereby 'under Temptation of too much complying and suiting their Doctrine 'and Teaching to the Humour rather than Good of their Auditors, 'which hath been a great Occasion of Faction and Schism, and of 'the Contempt of the Ministry: The Lords and Commons in Parliament assembled, being deeply sensible of the ill Consequence 'thereof, and piously desiring able Ministers in such Places, and a 'competent settled Maintenance for them by the Union of Churches; 'which is also become necessary, by reason of the great Ruin of 'many Churches and Parishes in the late ill Times, and otherwise;' do therefore most humbly beseech your most Excellent Majesty that it may be enacted; and be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assem-

No. 11.
27 Car. II. c. 3.
In what Cities and Towns, and how Churches and Chapels may be united. [illegible] V. 21. [illegible]

bled, and by the Authority of the same, That in every City or Town Corporate, and their Liberties, within the Kingdom of *England* and Dominion of *Wales*, which have a Mayor and Aldermen, and particular Justices of the Peace by Charter or Commission, or Bailiff or Bailiffs, or other chief Officer or Officers, and other Assistants, by like Charter; and where two or more Churches or Chapels, or a Church and a Chapel, and the Parishes thereunto belonging, do lie within the said Corporation or Liberties thereof, convenient to be united: In such Cases the Bishop of the Diocese where such Parish and Parishes are, with the Consent of the Mayor, Aldermen, and Justices of the Peace, Bailiff or Bailiffs, or other chief Officer or Officers, or the major Part of them, and of the Patron or Patrons of such Church or Churches, Chapel or Chapels, shall or may, according to due Form of Law, unite the said Churches or Chapels, or Church and Chapel, or any of them; and shall appoint at which Church or Chapel, Churches or Chapels, the said Parishioners and Inhabitants of the said Parishes or Places, to which the said Churches or Chapels, or Church and Chapel do belong, shall usually meet for the Worship of God, and which of the said Churches or Chapels, or Church or Chapel, shall be united and annexed unto the other, which shall be the Church presentative, unto which all Presentations shall thereafter be only made, and unto which the Parishioners shall resort as their proper Church; and after such Order made, the said Churches or Chapels, or Church and Chapel, shall accordingly for ever stand united: And the Parishioners, Landholders, and Inhabitants of the said Parishes and Places belonging to such Churches or Chapels, or Church and Chapel, so united and annexed, shall, as they or any of them become void, and from thence forward pay all such Tithes and other Duties as belong or did belong to the Incumbent of any of the said Churches or Chapels, or Church and Chapel, so united and annexed, unto the Incumbent of the said presentative Church or Chapel, unto which the said other Churches or Chapels, or Church or Chapel, shall be so united and annexed.

[illegible]

II. And it is hereby also enacted, That notwithstanding any such Union to be made by virtue hereof, each of the Parishes so united shall continue distinct, as to all Rates, Taxes, Parochial Rites, Charges, and Duties, and all other Privileges, Liberties, and Respects whatsoever, other than what is herein-before mentioned and specified; and Churchwardens shall be elected and appointed for each Parish, as they were before such Union made.

How, and when [illegible] shall take Effect. And [illegible] Patrons shall present. [illegible] Stud. [illegible]

III. And it is further enacted and provided, That where one or more of the said Churches or Chapels, or Church and Chapel, so united and annexed, shall be full at the Time of making such Union, That then the said Union shall take Effect for every such Church or Chapel, upon the first Avoidance after such Union made: And that the several Patrons of the said Churches and Chapels so united, shall and may present by Turns to that Church only which shall remain and be presentative, from Time to Time, in such Order as the said Bishop, with the Consent of the said Mayor, Aldermen, and Justices of Peace, Bailiff or Bailiffs, or other chief Officer or Officers within such Parishes, or the major Part of them, and of the Patron or Patrons of such Church or Churches, Chapel or Chapels, shall determine and decree, for the Preservation of their respective Rights therein, Respect being therein had to the Difference of the Values of the yearly Maintenance belonging to such Churches or Chapels, or any of them; saving unto the King's Majesty, his Heirs, and Successors, all the Tenths and First-fruits of all such Churches and Chapels so to be united, according to the Rates and Valuations at which the said Churches and Chapels are rated and valued in the Office of First-

fruits and Tenths in his Majesty's Court of Exchequer; and also reserving all Procurations and Pensions to all Persons to whom they are now and have been formerly, or shall be hereafter, due and payable; any Thing herein contained notwithstanding.

No. 11. 27 Car. II. [illegible]

IV. Provided always, That no Union of Parishes or Places to be made by virtue of this Act shall commence or be effectual in Law, until it be registered in the Register Book of the Bishop of the Diocese, which the Register is hereby required to do.

V. Provided always, That no Union made by Virtue hereof, shall be good and effectual, where the settled Maintenance belonging to the Parsons, Vicars, and Incumbents of the Church or Chapel, or Churches or Chapels so united, shall exceed the Sum of One Hundred Pounds *per Annum*, clear and above all Charges and Reprises; unless the respective Parishioners, or the major Part of them, under their Hands, desire otherwise.

[illegible] 100l. [illegible]

VI. Provided always, and be it enacted, That every Minister settled as aforesaid the Incumbent of any Church or Chapel, or Churches or Chapels, united according to this Act, shall be the full and lawful Incumbent thereof, to all Intents and Purposes, so as such Minister be a Graduate in one of the Universities of this Kingdom.

VII. And be it further enacted by the Authority aforesaid, That every Owner or Proprietor, Owners or Proprietors, of any Impropriation, Tithes, or Portion of Tithes, in any Parish or Chapelry within the Kingdom of *England* or Dominion of *Wales*, is, are, and shall be, by Virtue of this Act, enabled and impowered to give or bestow, unite and annex the same, or any Part thereof, unto the Parsonage or Vicarage of the said Parish Church or Chapel where the same do lie or arise, or settle the same in Trust for the Benefit of the said Parsonage or Vicarage, or of the Curate and Curates there successively, where the Parsonage is impropriate, and no Vicar endowed, according to his or their respective Estates, without any Licence of Mortmain; any Law or Statute to the contrary notwithstanding.

[illegible]

VIII. And be it further enacted, That if the settled Maintenance of such Parsonages, Vicarages, Churches and Chapels so united, or of any other Parsonage or Vicarage with Cure, in the Kingdom of *England* or Dominion of *Wales*, shall not amount to the full Sum of One Hundred Pounds *per Annum* clear and above all Charges and Reprises; that then it shall be lawful for the Parson, Vicar, and Incumbent of the same, and his Successors, to take, receive, and purchase to him and his Successors, Lands, Tenements, Rents, Tithes, or other Hereditaments, without any Licence of Mortmain; any Law or Statute to the contrary notwithstanding.

[illegible] 100l. per Annum, [illegible]

No. 12.

29 Car. II. c. 8.—An Act for confirming and perpetuating Augmentations made by Ecclesiastical Persons to small Vicarages and Curacies.

29 Car. II.

'WHEREAS divers Archbishops, Bishops, Deans and Chapters, 'and other Ecclesiastical Persons, in Obedience to his Majesty's 'Letters, bearing Date the First Day of *June*, in the Twelfth Year of 'his said Majesty's Reign, and out of a pious Care to improve poor 'Vicarages and Curacies, where the Endowments thereof were found 'too small to afford a competent Maintenance to those that serve the 'Cure, have, since his Majesty's happy Return, upon their renewing 'of Leases of Rectories, or Tithes impropriate or appropriate, made

No. 12.
29 Car. II. c. 8.

'or may hereafter make divers Reservations beyond the ancient Rent, 'to the Intent the same should or might become payable to the said 'Vicars or Curates, in Augmentation of their Endowments, which 'have been for the most Part enjoyed accordingly: But in regard that 'such Reservations were not made to the Vicars or Curates; or if 'they were, no convenient Remedy could be had by such Vicars or 'Curates for the Recovery thereof, and they were not at the Time 'thereof capable of taking any Interest to their own Use, whereby 'the said Provisions will depend upon the good Pleasure of the Suc-'cessors, and may in Time be disappointed:'

II. For the Establishment thereof, be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That all and every Augmentation of what Nature soever, granted, reserved, or agreed to be made payable, or intended to be granted, reserved, or made payable, since the said First Day of *June*, in the Twelfth Year of his said Majesty's Reign, or which shall at any Time hereafter be granted, reserved, or made payable to any Vicar or Curate, or reserved by way of Increase of Rent to the Lessors, but intended to be to or for the Use or Benefit of any Vicar or Curate, by any Archbishop, Bishop, Dean, Provost, Dean and Chapter, Archdeacon, Prebendary, or other Ecclesiastical Corporation, Person or Persons whatsoever, so making the said Reservation out of any Rectory impropriate, or portion of Tithes, belonging to any Archbishop, Bishop, Dean, Provost, Dean and Chapter, or other Ecclesiastical Corporation, Person or Persons, shall be deemed and adjudged to continue and be, and shall for ever hereafter continue and remain, as well during the Continuance of the Estate or Term upon which the said Augmentations were granted, reserved, or agreed to be made payable, as afterwards, in whose Hands soever the said Rectories or portion of Tithes shall be or come; which Rectories or portion of Tithes shall be chargeable therewith, whether the same be reserved again, or not; and the said Vicars and Curates respectively are hereby adjudged to be in the actual Possession thereof, for the Use of themselves and their Successors, and the same shall for ever hereafter be taken, received, and enjoyed by the said Vicars and Curates, and their Successors, as well during the Continuance of the Term or Estate upon which the said Augmentations were granted, reserved, or agreed to be made payable, as afterwards; and the said Vicars and Curates shall have Remedy for the same, either by Distress upon the Rectories impropriate, or portions of Tithes charged therewith, or by Action of Debt against that Person who ought to have paid the same, his Executors or Administrators; any Disability in the Person or Persons, Bodies Politick or Corporate so granting, or any Disability or Incapacity in the Vicars or Curates, to whom, or to or for whose Use or Benefit, the same are granted or intended to be granted; the Statute of *Mortmain*, or any other Law, Custom, or other Matter or Thing whatsoever, to the contrary notwithstanding.

Augmentations shall continue during the Estate upon which they are reserved and afterwards.

Remedy for the same.

III. Provided always, That no future Augmentation be confirmed by virtue of this Act, which shall exceed One Moiety of the clear yearly Value, above all Reprizes, of the Rectory impropriate out of the which the same shall be granted or reserved.

Augmentation exceeding one Moiety of the Value of the Rectory not confirmed.

IV. And to the End the said Vicars and Curates may the better make appear the Certainty of the said Augmentations; be it enacted by the Authority aforesaid, That every Archbishop, Bishop, Dean and Chapter respectively, on or before the Nine and Twentieth Day of *September* next coming, shall cause every Lease or Grant whereon any such Augmentation is made, to be fairly entered in a Book of

No. 12.
29 Car. II. c. 8.

Parchment, to be kept by their respective Registers for that Purpose. And every Dean, Archdeacon, Prebendary, or other Ecclesiastical Person respectively, shall cause every Lease or Grant whereon any such Augmentation hath been made by himself, his Predecessor or Predecessors, to be entered in the said Book, to be kept by the Register of the Bishop of the Diocese; for the entering whereof no Fee shall be paid, nor any Thing demanded, save only a reasonable Reward to the Clerk for entering the same, nor exceeding Five Shillings; which said Entry being examined by the respective Archbishop, Bishop, or Dean, and by them respectively attested in the said Book to be a true Copy of the original Lease or Grant, and that the Augmentation in the same was intended for such Use, shall be as a Record; a true Copy whereof, proved by Witnesses to be a true Copy, shall be deemed, taken, adjudged, and expounded to be good and sufficient Evidence in the Law, whereupon the said Vicars and Curates respectively shall and may by Virtue of this Act from Time to Time recover the Benefit of such Augmentation.

Augmentation Lease, where to be entered.

Fee for entering.

Such Entry how to be attested, to be a Record and Evidence at Law

V. And be it further enacted by the Authority aforesaid, That where any Archbishop, Bishop, Dean and Chapter, or any other Ecclesiastical Corporation or Person whatsoever, upon the renewing or granting any Lease or Estate, have made any Agreement for an Augmentation for the Vicar or Curate, and such Augmentation hath for any Time been accordingly paid, although the said Agreement is not expressed or mentioned in the said Lease or Grant, every such Ecclesiastical Person shall cause the Substance of such Agreement to be entered in the said Book, to remain for a Memorial of it to Perpetuity.

Agreements for Augmentation to be entered likewise.

VI. And be it further enacted, That such Augmentation so entered shall likewise continue, and be for ever hereafter good and available in the Law, for the Benefit of the Vicar or Curate for whom it was intended, and their Successors, as well against the Archbishop, Bishop, or other Ecclesiastical Corporation or Person, who agreed for the same, and his and their Successors, as against every other Person enjoying the said Rectories or Portions of Tithes intended to be charged therewith, in the same Manner, and for which they shall have the same Remedy, as they should or ought to have by Virtue of this Act, if the same had been mentioned and reserved in and by the Lease.

VII. And if any Question shall hereafter arise concerning the Validity of such Grants, or any other Matter or Thing in this Act mentioned and contained, such favourable Constructions, and such further Remedies, if need be, shall be had and made for the Benefit of the Vicars and Curates, as heretofore hath been had and made, or may be had for other charitable Uses, upon the Statutes for charitable Uses.

Augmentations to be favoured in Construction as charitable Uses.

VIII. Provided always, and be it further enacted by the Authority aforesaid, That if upon the Surrender, Expiration, or other Determination of any Lease wherein any such Augmentation as aforesaid, hath been or shall be granted, any new Lease of the Premises, or any Part thereof, shall hereafter be made, without express Continuance of the said Augmentation, every such new Lease shall be utterly void to all Intents and Purposes.

New Leases without express Continuance of the Augmentations to be void

[A Lease of the Parsonage of Stourton saved.]

[A Lease of St. Evall, in Cornwall, saved.]

No. 13.

1 William and Mary, c. 16.—An Act that the Simoniacal Promotion of One Person may not prejudice another.

1 W. and M. c. 16. 31 Eliz. c. 6.

'WHEREAS it hath often happened, that Persons Simoniack or 'Simoniacally promoted to Benefices or Ecclesiastical Livings, 'have enjoyed the Benefit of such Livings many Years, and sometimes 'all their Life-time, by Reason of the secret Carriage of such Simoniacal Dealing; and after the Death of such Simoniack Person, another 'Person innocent of such Crime, and worthy of such Preferment, 'being presented or promoted by another Patron innocent also of that 'Simoniacal Contract, have been troubled and removed upon Pretense of Lapse (or otherwise) to the Prejudice of the innocent Patron 'in Reversion, and of his Clerk, whereby the Guilty go away with 'Profit of his Crime, and the innocent succeeding Patron and his 'Clerk are punished, contrary to all Reason and good Conscience:'

Simoniacal Contract where it shall not prejudice. Vin. V. 19, 455, &c. 2 Haw. P. C. 389 & 396.

II. For Prevention whereof, be it enacted by the King's and Queen's most Excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, after the Death of the Person so Simoniacally promoted, the Offence or Contract of Simony shall, neither by way of Title in pleading, or in Evidence to a Jury, or otherwise, hereafter be alledged or pleaded, to the Prejudice of any other Patron innocent of Simony, or of his Clerk by him presented or promoted, upon Pretence of Lapse to the Crown, Metropolitan, or otherwise, unless the Person Simoniack or Simoniacally presented, or his Patron, was convicted of such Offence at the Common Law, or some Ecclesiastical Court, in the Life-time of the Person Simoniack or Simoniacally promoted or presented; any Law or Statute to the contrary notwithstanding.

Lease made bona fide by Simonist good.

III. And be it also provided, enacted, and declared by the Authority aforesaid, That no Lease or Leases, really and *bona fide* made, or hereafter to be made, by any such Person as aforesaid, Simoniack or Simoniacally promoted to any Deanery, Prebend, or Parsonage, or other Ecclesiastical Benefice or Dignity, for good and valuable Consideration, to any Tenant or Person not being privy unto, or having Notice of such Simony, shall be impeached or avoided for or by Reason of such Simony, but shall be good and effectual in Law, the said Simony notwithstanding.

No. 14.

1 William and Mary, c. 26.—An Act to vest in the Two Universities the Presentations of Benefices belonging to Papists.

1 W. and M. c. 26. 3 Jac. I. c. 5.

'WHEREAS in and by a certain Clause mentioned in One Act 'of Parliament made in the Third Year of the Reign of King 'JAMES the First, intituled, *An Act to prevent and avoid Dangers 'which may grow by Popish Recusants*, it is enacted, That every 'Person or Persons that is or shall be a Popish Recusant Convict, 'during the Time that he shall be or remain a Recusant, shall, from 'and after the End of that present Session of Parliament, be utterly 'disabled to present to any Benefice with Cure, or without Cure,

No. 11. [illegible]

'Prebend, or any other Ecclesiastical Living, or to collate or nominate to any Free School, Hospital, or Donative whatsoever, and from the Beginning of the said Parliament shall likewise be disabled to grant any Avoidance to any Benefice, Prebend, or other Ecclesiastical Living:'

Persons refusing Declaration [illegible]

II. Be it enacted by the King's and Queen's most Excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by Authority of the same, That every Person who shall refuse or neglect to make, repeat, and subscribe the Declaration mentioned in One Act of this present Parliament, intituled, *An Act for the better securing the Government by disarming Papists, and reputed Papists,* when the same shall be tendered to such Person by any Two or more Justices of the Peace, as in the said Act is enacted, or who shall upon Notice given, as in the said Act is directed, refuse or forbear to appear before them for the making, repeating, and subscribing thereof, and shall thereupon have his Name, Surname, and usual Place of Abode certified and recorded at the General Quarter Sessions to be holden for the Shire, Riding, Division, or Liberty, for which such Two Justices shall be Justices of the Peace, by the Clerk of the Peace, or Town Clerk, as in the said Act is appointed; every such Person so recorded shall be, from and after the Time of such Record made, adjudged, taken, and esteemed disabled to make such Presentation, Collation, Nomination, Donation, or Grant of any Avoidance of any Benefice, Prebend, or Ecclesiastical Living, as fully and amply as if such Person were a Popish Recusant Convict by the Laws or Statutes of this Realm; any Law, Statute, or Usage to the contrary notwithstanding: And that the Chancellor and Scholars of the University of *Oxford*, and the Chancellor and Scholars of the University of *Cambridge*, by what Name or Names soever they, or either of them, are incorporated, shall respectively have the Presentation, Nomination, Collation, and Donation of and to every such Benefice, Prebend, or Ecclesiastical Living, School, Hospital, and Donative, set, lying, and being in the respective Counties, Cities, and other the Places and Limits in the said Act of the Third of King *James* mentioned, as in and by the said Act is directed and appointed, so often as any of them shall become void, according to the Limitations, Directions, and Provisions in that Behalf limited, enacted, and provided.

III. And be it further enacted by the Authority aforesaid, That where any Person or Persons are or shall be seised or possessed of any Advowson, Right of Presentation, Collation, or Nomination to any such Ecclesiastical Living, Free School, or Hospital as aforesaid, in Trust for any Papist or Popish Recusant, who shall be convicted or disabled, according to the true Intent and Meaning of the said Statute, made in the Third Year of the Reign of the said King *James* the First, or by this present Act, every such Person and Persons so seised and possessed in Trust for any Papist or Popish Recusant Convict or disabled, shall be and are hereby adjudged to be disabled to present, nominate, or collate to any such Ecclesiastical Living, Free School, or Hospital, or to grant any Avoidance thereof; and their and every of their Presentations, Nominations, Collations, and Grants, shall be null and void to all Intents and Purposes whatsoever; and the Chancellors and Scholars of the said respective Universities as aforesaid, upon every Avoidance, shall have the Presentations, Nominations, and Collations, to such Ecclesiastical Livings, Free Schools, and Hospitals, in such Manner as they should have the same, in Case such Recusant convict or disabled were seised or possessed thereof.

3 Jac. I, c. 5. [illegible]

Penalty upon Trustees presenting without Notice

IV. And in case any Trustee or Trustees, or Mortgagee, or Grantee of any Avoidance, hereafter present, nominate, or collate, or

No. 14. 1 W. & M. c. 26 cause to be presented, nominated, or collated any Person to any such Ecclesiastical Living, Free School, or Hospital, whereof the Trust shall be for any Recusant convict or disabled, without giving Notice of the Avoidance in Writing to the Vice Chancellor for the Time being of the University, to whom the Presentation, Nomination, or Collation shall belong, according to the true Intent of this Act, within Three Months after the Avoidance shall happen, such Trustee or Trustees, Mortgagees or Grantees, shall forfeit and pay the Sum of Five Hundred Pounds, to the said respective Chancellors and Scholars of either of the said Universities to whom such Presentation, Nomination, or Collation shall belong, according to the true Intent of this present Act, to be recovered in any of their Majesties' Courts of Record, by Action of Debt, Bill, Paint, or Information, wherein no Essoin, Protection, or Wager of Law, shall be allowed.

Presentation of Person beneficed, void. V. Provided always, That the said Chancellors and Scholars of either of the said Universities shall not present or nominate to any Benefice with Cure, Prebend, or other Ecclesiastical Living, any Person as shall then have any other Benefice with Cure of Souls; and if any such Presentation shall be had or made of any such Person so beneficed, the said Presentation shall be utterly void; any Thing in this Act to the contrary notwithstanding.

What Absence makes Living void. VI. Provided, That if any Person so presented or nominated to any Benefice with Cure, shall be absent from the same above the Space of Sixty Days in any One Year, that in such Case the said Benefice shall become void.

Taking the Oaths purges the Disability. VII. Provided nevertheless, That if any such Person shall present himself before the Justices of the Peace at the General Quarter Sessions to be holden for the County, Riding, Division, or Liberty where his Name was recorded, and shall there in open Court make, repeat, and subscribe the said Declaration, and take the several Oaths contained in one Act of this present Parliament, intituled, *An Act for the abrogating of the Oaths of Supremacy and Allegiance, and appointing other Oaths,* [C. 8.] he shall from thenceforth be discharged of and from the said Disability, and be enabled to make such Presentation, Collation, Nomination, and Donation, and Grant of any Avoidance to any Benefice, Prebend, or Ecclesiastical Living, School, or Hospital, as if this Act had not been made.

No. 15.

4 William & Mary, c. 12.—An Act to make Parishioners of the Church United Contributors to the Repairs and Ornaments of the Church to whom the Union is made.

4 W. & M. c. 12. 'WHEREAS by an Act of Parliament made in the Seventeenth 'Year of the Reign of King CHARLES the Second, of blessed 'Memory, Provision was made for the Uniting Churches in Cities and 17 Car. II. c. 3. 'Towns Corporate: And forasmuch as it is highly reasonable that 'Parishioners of Parishes whose Churches are demolished, and either 'before or afterwards united to other Churches, should be Contri'butors towards the Repairs and other Parochial Charges of such 'other Church, to which by Virtue of the said Act they are united.

37 H. VIII. c. 21. If two Churches be united, at (one of them) dem(olished), the Parishioners of that Church shall pay towards the Repairs, &c. of the other. Vin V 31, 591 II. Therefore be it enacted by the King's and Queen's most Excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That where any Churches heretofore have been, or hereafter shall be, united by Virtue of the said Act, and One of the said Churches so united was, at the Time of such Union, or shall afterwards be demolished, that in all

such Cases, as often as the Church which was or shall be made the Church Presentative, and to which the Union was or shall be made, shall be out of Repair, or there shall be need of decent Ornaments for the Performance of Divine Service therein, that the Parishioners of the Parish, whose Church shall then be down or demolished, shall bear and pay, towards the Charges of such Repairs and decent Ornaments, such Share and Proportion as the Archbishop or Bishop that shall make such Union shall by the same Union direct and appoint; and for Want of such Direction and Appointment, then One-third Part of such Charges of the Repairs and decent Ornaments, which shall be made or provided; and the same shall be rated, taxed, and levied, and in Default thereof such Process and Proceedings shall be had and made against him or them, as if it were for the Reparation and finding decent Ornaments for their own Parish Church, if no such Union had been made; any Law, Custom, Usage, or Opinion, to the contrary heretofore notwithstanding. No. 15. 4 W. and M. c. 12.

No. 16.

2 & 3 Anne, c. 11.—An Act for the Making more effectual her Majesty's gracious Intentions for the Augmentation of the Poor Clergy, by enabling her Majesty to grant in Perpetuity the Revenues of the First-fruits and Tenths; and also for enabling any other Persons to make Grants for the same Purpose.

'WHEREAS at a Parliament holden in the six and twentieth Year of the Reign of King HENRY the Eighth, the First-fruits, Revenues, and Profits for one Year, upon every Nomination or Appointment to any Dignity, Benefice, Office or Promotion Spiritual, within this Realm, or elsewhere within the said King's Dominions, and also a perpetual yearly Rent or Pension, amounting to the Value of the tenth Part of all the Revenues and Profits belonging to any Dignity, Benefice, or Promotion Spiritual whatsoever, within any Diocese of this Realm, or in *Wales*, were granted to the said King HENRY the Eighth, his Heirs and Successors; and divers other Statutes have since been made touching the First-fruits and annual Tenths of the Clergy, and the ordering thereof: And whereas a sufficient settled Provision for the Clergy, in many Parts of this Realm, hath never yet been made, by Reason whereof divers mean and stipendiary Preachers are in many Places entertained to serve the Cures, and officiate there, who, depending for their necessary Maintenance upon the Good-will and Liking of their Hearers, have been, and are thereby under Temptation of too much complying and suiting their Doctrines and Teaching to the Humours rather than the Good of their Hearers, which hath been a great Occasion of Faction and Schism, and Contempt of the Ministry: And forasmuch as your Majesty, taking into your princely and serious Consideration the mean and insufficient Maintenance belonging to the Clergy in divers Parts of this your Kingdom, hath been most graciously pleased, out of your most religious and tender Concern for the Church of *England* (whereof your Majesty is the only supreme Head on Earth) and for the poor Clergy thereof, not only to remit the Arrears of your Tenths due from your poor Clergy, but also to declare unto your most dutiful and loyal Commons your royal Pleasure and pious Desire, that the whole Revenue arising from the 2 & 3 Anne, c. 11. 26 H. VIII. c. 3.

No. 16.
3 Anne, c. 11.

'First-fruits and Tenths of the Clergy might be settled for a perpetual 'Augmentation of the Maintenance of the said Clergy, in Places where 'the same is not already sufficiently provided for:' We your Majesty's most dutiful and loyal subjects, the Commons of *England*, in Parliament assembled, to the End that your Majesty's most gracious Intentions may be made effectual, and that the Church may receive so great and lasting an Advantage from your Majesty's parting with so great a Branch of your Revenue, towards the better Provision for the Clergy not sufficiently provided for; and to the Intent your Majesty's singular Zeal for the Support of the Clergy, and the Honour, Interest, and future Security of the Church, as by Law established, may be perpetuated to all Ages, do most humbly beseech your Majesty that it may be enacted; and be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall and may be lawful for the Queen's most Excellent Majesty, by her Letters Patents under the Great Seal of *England*, to incorporate such Persons as her Majesty shall therein nominate or appoint, to be one Body Politick and Corporate, to have a common Seal, and perpetual Succession: and also at her Majesty's Will and Pleasure, by the same, or any other Letters Patents, to grant, limit, or settle, to or upon the said Corporation, and their Successors for ever, all the Revenue of First-fruits, and yearly perpetual Tenths of all Dignities, Offices, Benefices, and Promotions Spiritual whatsoever, to be applied and disposed of, to and for the Augmentation of the Maintenance of such Parsons, Vicars, Curates, and Ministers, officiating in any Church or Chapel within the Kingdom of *England*, Dominion of *Wales*, and Town of *Berwick-upon-Tweed*, where the Liturgy and Rites of the Church of *England*, as now by Law established, are or shall be used and observed, with such lawful Powers, Authorities, Directions, Limitations; and Appointments and under such Rules and Restrictions, and in such Manner and Form, as shall be therein expressed; the Statute made in the first Year of her said Majesty's Reign, intituled, *An Act for the better Support of her Majesty's Household, and of the Honour and Dignity of the Crown*, or any other Law to the contrary in any wise notwithstanding.

The Queen may erect a Corporation, and settle on them and their Successors, their First-Fruits and Tenths, for Augmentation of the Maintenance of the meaner Clergy.
'By 3 Geo. I. c. 10, a Collector is to be appointed.'

1 Annæ, st. 1, c. 7.

II. Provided always, and it is hereby declared, That all and every the Statutes and Provisions, touching or concerning the ordering, levying, and true answering and Payment, or Qualification of the said First-fruits and Tenths, or touching the Charge, Discharge, or Alteration of them, or any of them, or any Matter or Thing relating thereunto, which were in Force at the Time of making this Act, shall be, remain, and continue in their full Force and Effect, and be observed and put in due Execution according to the Tenors and Purports of the same, and every of them, for such Intents and Purposes nevertheless, as shall be contained or directed in or by the said Letters Patents.

All Statutes, &c. relating to the First-Fruits and Tenths to continue in force.

III. Provided also, That this Act, or any Thing therein contained, shall not extend to avoid, or any way to impeach or affect any Grant, Exchange, Alienation, or Incumbrance, at any Time heretofore made, of or upon the said Revenues of First-fruits and Tenths, or any Part thereof; but that the same shall, during the Continuance of such Grant, Exchange, Alienation, or Incumbrance respectively, be and remain of and in such Force and Virtue, and no other, to all Intents and Purposes, as if this Act had not been made.

Act not to avoid any Grant, &c. heretofore made of any the said Revenues.

IV. And for the Encouragement of such well-disposed Persons as shall, by her Majesty's Royal Example, be moved to contribute to so pious and charitable a Purpose, and that such their Charity may

No. 16.
2 & 3 Anne, c. 11.

be rightly applied; Be it enacted by the Authority aforesaid, That all and every Person and Persons, having in his or their own Right any Estate or Interest in Possession, Reversion, or Contingency, of or in any Lands, Tenements, or Hereditaments, or any Property of or in any Goods or Chattels, shall have full Power, Licence, and Authority, at his, her, and their Will and Pleasure, by Deed inrolled, in such Manner, and within such Time, as is directed by the Statute made in the Twenty-seventh Year of the Reign of King HENRY the Eighth, for Inrolment of Bargains and Sales, or by his, her, or their last Will or Testament in Writing, duly executed according to Law, to give and grant to, and vest in the said Corporation, and their Successors, all such his, her, or their Estate, Interest, or Property in such Lands, Tenements, and Hereditaments, Goods and Chattels, or any Part or Parts thereof, for and towards the Augmentation of the Maintenance of such Ministers as aforesaid, officiating in such Church or Chapel, where the Liturgy and Rights of the said Church are or shall be so used or observed as aforesaid, and having no settled competent Provision belonging to the same, and to be for that Purpose applied according to the Will of the said Benefactor, in and by such Deed inrolled, or by such Will or Testament, executed as aforesaid, expressed: And in Default of such Direction, Limitation, or Appointment, in such Manner as by her Majesty's Letters Patents shall be directed and appointed as aforesaid: And such Corporation, and their Successors, shall have full Capacity and Ability to purchase, receive, take, hold, and enjoy, for the Purposes aforesaid, as well from such Persons as shall be so charitably disposed to give the same, as from all other Persons as shall be willing to sell or aliene to the said Corporation any Manors, Lands, Tenements, Goods or Chattels, without any Licence or Writ of *Ad quod Damnum*; the Statute of *Mortmain*, or any other Statute or Law to the contrary notwithstanding.

27 H. VIII. c. 16. [illegible] give Lands Tenements, or Goods, &c. to the said Corporation,

or sell or [illegible] any Manors, Lands, &c.

V. Provided always, That this Act or any Thing therein contained shall not extend to enable any Person or Persons, being within Age, or of *Nonsane* Memory, or Women Covert, without their Husbands, to make any such Gift, Grant, or Alienation; any Thing in this Act contained to the contrary in any wise notwithstanding.

Persons excepted from making such Gifts, &c.

'VI. And whereas four Bonds for four half yearly Payments of 'the First-fruits, as the same are rated, and also a fifth Bond for a 'further Value or Payment, in Respect of the same First-fruits, have 'been required and taken from the Clergy, to their great and un-'necessary Burden and Grievance:' For Remedy thereof be it enacted and declared by the Authority aforesaid, That from and after the Twenty-fifth Day of *March* in the Year of our Lord One Thousand Seven Hundred and Four, one Bond only shall in such Case be given or required for the four Payments of the said First-fruits: Which said First-fruits, as well as the Tenths payable by the Clergy, shall hereafter be answered and paid by them according to such Rates and Proportions only as the same have heretofore been usually rated and paid: And no such fifth Bond already given shall, from and after the said Twenty-fifth Day of *March* in the Year One Thousand Seven Hundred and Four, be sued or recovered.

One Bond only to be taken for the four Payments of the First-fruits.

No. 17.

7 Anne, c. 18.—An Act to preserve the Rights of Patrons to Advowsons. [1 G. 2. 23. § 6. Ir.]

7 Anne, c. 18. 'FORASMUCH as the Pleading in a *Quare Impedit* is found 'very difficult, whereby many Patrons are either defeated of their 'Rights of Presentation, or put to great Charge and Trouble to recover 'their Right, which is occasioned by the Law as it now is:' For Remedy whereof, be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the Authority of the same, That no Usurpation upon any Avoidance in any Church, Vicarage, or other Ecclesiastical Promotion, shall displace the Estate or Interest of any Person entitled to the Advowson or Patronage thereof, or turn it to a Right, but he or she that would have had a Right, if no Usurpation had been, may present or maintain his or her *Quare Impedit* upon the next, or any other Avoidance, if disturbed, notwithstanding such Usurpation; and if Coparceners, or Joint Tenants, or Tenants in Common be seized of any Estate of Inheritance in the Advowson of any Church or Vicarage, or other Ecclesiastical Promotion, and a Partition is or shall be made between them to present by Turns, that thereupon every one shall be taken and adjudged to be seized of his or her separate Part of the Advowson to present in his or her Turn; as if there be Two, and they make such Partition, each shall be said to be seized, the one of the one Moiety to present in the first Turn, the other of the other Moiety to present in the second Turn; in like Manner, if there be three, four, or more, every one shall be said to be seized of his or her Part, and to present in his or her Turn.

No Usurpation shall displace the Estate of the Patron; but he may maintain a Quare Impedit.

If Coparceners, &c. be seized of an Advowson &c. and a Partition is made to present by Turns, each shall be seized of a separate Estate to present accordingly.

No. 18.

12 Anne, c. 12.—An Act for the better Maintenance of Curates within the Church of *England*, and for preventing any Ecclesiastical Persons from buying the next Avoidance of any Church Preferment.

12 Anne, c. 12. 'WHEREAS the Absence of beneficed Ministers ought to be 'supplied by Curates that are sufficient and licensed Preachers, 'and no Curates or Ministers ought to serve in any Place without the 'Examination and Admission of the Bishop of the Diocese, or Ordi'nary of the Place, having Episcopal Jurisdiction: But nevertheless, 'for Want of sufficient Maintenance and Encouragement for such 'Curates, the Cures within that Part of *Great Britain* called *England*, 'have been in several Places meanly supplied:' For Remedy whereof, Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That if any Rector or Vicar having Cure of Souls shall, from and after the Nine and Twentieth Day of *September*, in the Year of our Lord One Thousand Seven Hundred and Fourteen, nominate and present any Curate to the Bishop or Ordinary, to be licensed

Bishop, &c. to appoint a Stipend to Curates, not exceeding 50l. per Ann. nor less than 20l. and on Neglect of Payment the Benefice.

or admitted to serve the Cure of such Rector or Vicar in his Absence, the said Bishop or Ordinary, having Regard to the Greatness of the Cure, and the Value of the Ecclesiastical Benefices of such Rector or Vicar, shall, on or before the granting such Licence, appoint by Writing under his Hand and Seal a sufficient certain Stipend or Allowance, not exceeding Fifty Pounds *per Annum*, nor less than Twenty Pounds *per Annum*, to be paid or answered at such Times as he shall think fit, by such Rector or Vicar, to such Curate, for his Support and Maintenance; and if it shall appear to the Bishop or Ordinary, upon Complaint or otherwise, that any Curate of such Rector or Vicar, licensed or admitted before the said Nine and Twentieth Day of *September* in the Year of our Lord One Thousand Seven Hundred and Fourteen, hath not a sufficient Maintenance, it shall be lawful to and for the said Bishop or Ordinary to appoint him a certain Stipend or Allowance in like Manner as before mentioned; and in case any Difference shall arise between any Rector or Vicar and his Curate, touching such Stipend or Allowance, or the Payment thereof, the Bishop or Ordinary, on Complaint to him made, shall summarily hear and determine the same; and in case of Neglect or Refusal to pay such Stipend or Allowance, may sequester the Profits of such Benefice, for or until Payment thereof.

No 18.
12 Anne, c. 12

'II. And whereas some of the Clergy have procured Preferments 'for themselves by buying Ecclesiastical Livings, and others have 'been thereby discouraged;' Be it further enacted by the Authority aforesaid, That if any Person, from and after the Twenty-ninth Day of *September* One Thousand Seven Hundred and Fourteen, shall or do, for any Sum of Money, Reward, Gift, Profit, or Advantage, directly or indirectly, or for or by reason of any Promise, Agreement, Grant, Bond, Covenant, or other Assurance, of or for any Sum of Money, Reward, Gift, Profit, or Benefit whatsoever, directly or indirectly, in his own Name, or in the Name of any other Person or Persons, take, procure, or accept the next Avoidance of, or Presentation to any Benefice with Cure of Souls, Dignity, Prebend, or Living Ecclesiastical, and shall be presented or collated thereupon, (1) that then every such Presentation or Collation, and every Admission, Institution, Investiture, and Induction upon the same, shall be utterly void, frustrate, and of no Effect in Law, and such Agreement shall be deemed and taken to be a Simoniacal Contract; and that it shall and may be lawful to and for the Queen's Majesty, her Heirs and Successors, to present or collate unto, or give or bestow every such Benefice, Dignity, Prebend, and Living Ecclesiastical, for that one Time or Turn only: and the Person so corruptly taking, procuring, or accepting any such Benefice, Dignity, Prebend, or Living, shall thereupon, and from thenceforth, be adjudged a disabled Person in Law, to have and enjoy the same Benefice, Dignity, Prebend, or Living Ecclesiastical, and shall also be subject to any Punishment, Pain or Penalty, limited, prescribed, or inflicted by the Laws Ecclesiastical, in like Manner as if such corrupt Agreement had been made after such Benefice, Dignity, Prebend, or Living Ecclesiastical had become vacant; any Law or Statute to the contrary in any wise notwithstanding.

Penalty of taking for any Sum of Money, &c. the next Avoidance, &c.
31 El. c. 6.
1 W. & M. stat. 1, c. 16.

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(1) This Statute is understood as only prohibiting Clergymen from purchasing Livings for themselves. Burn Ec. L. SIMONY.

No. 19.

12 Anne, c. 14.—An Act for rendering more Effectual an Act made in the third Year of the Reign of King JAMES the First, intituled, *An Act to prevent and avoid Dangers which may grow by Popish Recusants*; and also of one other Act made in the first Year of the Reign of their late Majesties King WILLIAM and Queen MARY, intituled, *An Act to vest in the two Universities the Presentations of Benefices belonging to Papists*; and for vesting in the Lords of Justiciary, Power to inflict the same Punishments against Jesuits, Priests, and other trafficking Papists, which the Privy Council of *Scotland* was impowered to do by an Act passed in the Parliament of *Scotland*, intituled, *An Act for preventing the Growth of Popery*.

12 Anne, c. 14. 3 Jac. I. c. 4. 1 W. & M. Sess. 1, c. 26. 'FORASMUCH as by an Act of Parliament made in the Third 'Year of the Reign of King JAMES the First, intituled, *An Act 'to prevent and avoid Dangers which may grow by Popish Recusants*, 'and also one other Act made in the first Year of the Reign of their 'late Majesties King WILLIAM and Queen MARY, intituled, *An Act 'to vest in the two Universities the Presentations of Benefices belong-'ing to Papists*, the Presentation, Nomination, Collation, and Dona-'tion of and to Benefices, Prebends, or Ecclesiastical Livings, Schools, 'Hospitals, and Donatives belonging to Popish Recusants, and other 'Persons thereby disabled to present, collate, or nominate, are given 'to the two Universities; but they are so given only where such Per-'sons are and stand convicted by such Ways and Means as in the said 'recited Acts are mentioned and provided: which Acts do neverthe-'less prove ineffectual for such Purposes, by reason such Patrons 'are not convicted, or not in such Manner as the said Acts do direct 'and appoint: Therefore, for making the said Laws more effectual, 'and for the speedier and easier vesting the Presentations to such 'Benefices in the two Universities, according to the Intention of the 'said Laws,' Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That every Papist or Person making Profession of the Popish Religion, and every Child not being a Protestant, under the Age of One and Twenty Years, of every such Papist or Person professing the Popish Religion, and every Mortgagee, Trustee or Person any ways intrusted, directly or indirectly, mediately or immediately, by or for any such Papist or Person making Profession of the Popish Religion, or such Child, as aforesaid, whether such Trust be declared by Writing or not, shall, from and after the Tenth Day of *July*, which shall be in the Year of our Lord One Thousand Seven Hundred and Fourteen, be disabled, and is hereby made incapable to present, collate or nominate to any Benefice, Prebend, or Ecclesiastical Living, School, Hospital, or Donative, or to grant any Avoidance of any Benefice, Prebend, or Ecclesiastical Living; and that every such Presentation, Collation, Nomination, and Grant, and every Admission, Institution, and Induction, to be made thereupon, shall be utterly void and of no Effect, to all Intents, Constructions, and Pur-

Papists, &c. disabled to present to any Benefice, &c. 7 Jac. I. c. 6. 25 Car. II. c. 2.

poses whatsoever; and that in every such Case the Chancellor and Scholars of the University of *Oxford*, and the Chancellor and Scholars of the University of *Cambridge*, by what Name or Names soever they or either of them are incorporated, shall respectively have the Presentation, Nomination, Collation, and Donation, of and to every such Benefice, Prebend, or Ecclesiastical Living, School, Hospital, and Donative, set, lying, and being in the respective Counties, Cities, and other Places and Limits in the said Act of the Third Year of King JAMES mentioned, as in and by the said Act is directed and appointed in the Case of a Popish Recusant Convict.

No. 19. 12 Anne, c. 14. And the two Universities shall have the Presentation, &c. in the respective Counties, &c. mentioned in 3 Jac. I. c. 5.

II. And be it further enacted by the Authority aforesaid, That from and after the said Tenth Day of *July*, when and as often as any Presentation to any Benefice or Ecclesiastical Living shall be brought to any Archbishop, Bishop, or other Ordinary, from any Person who shall be reputed to be, or whom such Archbishop, Bishop, or other Ordinary shall have cause to suspect to be a Papist, or Trustee of any Person making Profession of the Popish Religion, or suspected to be such, it shall and may be lawful to and for such Archbishop, Bishop, or other Ordinary, and he is hereby required to tender or administer to every such Person, if present, the Declaration against Transubstantiation, set down and expressed in an Act of Parliament made in the Five and Twentieth Year of the Reign of the late King CHARLES the Second, intituled, *An Act for preventing Dangers which may happen from Popish Recusants*, to be by such Person made, repeated, and subscribed; and in case such Person shall be absent, the said Archbishop, Bishop, or other Ordinary shall, by Notice in Writing to be left at the Place of Habitation of such Person, appoint some convenient Time and Place when and where such Person shall appear before such Archbishop, Bishop, or other Ordinary, or some Persons to be authorized by such Archbishop, Bishop, or other Ordinary, by Commission under his or their Seal of Office; and upon such Appearance the said Archbishop, Bishop, or other Ordinary, or such Commissioners, shall tender or administer the said Declaration to the Person making such Presentation; and in case such Person shall neglect or refuse to make, repeat, and subscribe such Declaration, when the the same shall be so tendered, as aforesaid, or shall neglect or refuse to appear before such Archbishop, Bishop, or other Ordinary, or such Commissioners, upon such Notice as aforesaid, That then such Presentation shall be utterly void and of none Effect; and in every such Case, such Archbishop, Bishop, or other Ordinary shall within Ten Days next after such Neglect or Refusal, send and give a Certificate under his or their Seal of Office of such Neglect or Refusal to the Vice-Chancellor for the Time being, of that University to whom such Presentation would of Right belong, if such Person so presenting had been a Popish Recusant Convict; and it shall and may be lawful, to and for the Chancellor and Scholar of such University to present a Person qualified according to the said Acts, to such Benefice or Ecclesiastical Living; and the Presentation to such Benefice or Ecclesiastical Living, for that Turn only, is hereby given unto, and vested in them for that Purpose; any Matter, Clause, or Thing contained in either of the said former recited Acts to the contrary thereof notwithstanding.

When any Presentation is brought to any Archbishop, etc. he may tender to the Person, if present, the Declaration in 25 Car. II. c. 2.

If absent, summon him to appear.

Refusing to make the Declaration, or to appear, the Presentation shall be void.

And the Archbishop, etc shall certify such Refusal to the University, who shall present, etc.

III. And for the better Discovery of all secret Trusts and fraudulent Conveyances made by Papists or Persons making Profession of the Popish Religion, of their Advowsons and Right of Presentation, Nominations and Donation, to any Benefices or Ecclesiastical Livings; be it further enacted by the Authority aforesaid, That when the Presentation of any Person presented to any Benefice or Ecclesiastical Living, shall be brought to any Archbishop, Bishop, or other Ordi-

Bishops, etc. to examine Persons presented on Oath.

No. 19.
12 Anne, c. 14.

nary, the said Archbishop, Bishop, or Ordinary is hereby required, before he give Institution, to examine the Person presented upon Oath, whether to the best and utmost of his Knowledge and Belief, the Person or Persons who have made such Presentation, be the true and real Patron or Patrons of the said Benefice or Ecclesiastical Living, or made the said Presentation in his, or her, or their own Right, or whether such Person or Persons so presenting be not, mediately or immediately, directly or indirectly, Trustee or Trustees, or any way intrusted for some other, and what Person or Persons by Name, who is or are Papists, or make Profession of the Popish Religion, or the Children of such, or for any other and what Person or Persons, or what he knows, has heard, or believes, touching or concerning the same; and if such Person or Persons so presented shall refuse to be so examined, or shall not answer directly thereto, then and in every such Case such Presentation shall be void.

Refusing to be examined, the Presentation shall be void.

University may exhibit Bills in Chancery for the Discovery of fraudulent Trusts.

IV. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for the Chancellor and Scholars of the respective Universities, to whom the Presentations to such Benefices and Ecclesiastical Livings should belong, in case the rightful Patrons had been Popish Recusants convict, and their Presentees or Clerks, for the better Discovery of such secret and fraudulent Trusts, had, done, made, and created, by or for such Papists or Persons professing the Popish Religion, and their Children, as aforesaid, to exhibit their Bill in any Court of Equity against such Person or Persons presenting, and such Person or Persons as they have Reason to believe to be the *Cestui que Trust* of the Advowson of such Benefice or Ecclesiastical Living, or any other Person who they have Cause to suspect may be able to make any other or further Discovery of such secret Trusts and Practices; to which Bill the Defendants therein named, being duly served with the Process of the Court in which the said Bill shall be exhibited, shall forthwith directly answer to the Facts charged and inquired in the said Bill, at the Discretion of the Court where such Bill shall be exhibited; and in case the Defendants, or any of them, shall refuse or neglect to answer the said Bill in such reasonable Time as shall be for that Purpose allowed and appointed, by Discretion of the said Court where the said Cause shall be depending (the Distance of Place and the Circumstance of the Defendant or Defendants considered), That then and in such Case the said Bill shall be taken *pro Confesso*, and be allowed as Evidence against such Person so neglecting and refusing, and his Trustee or Trustees, and his and their Clerk: Provided that every Person having fully answered such Bill in such Court of Equity, and not knowing any Thing of any such Trust for a Papist or other Person disabled, as aforesaid, shall be intitled to his Costs, to be taxed according to the Course of the Court.

When any Quare Impedit is depending, the Court may administer an Oath to discover any secret Trust.

V. And be it further enacted by the Authority aforesaid, That it shall and may be lawful for the Court where any *Quare Impedit* shall be hereafter depending, at the Instance of either of the said Chancellors and Scholars, or their Clerk, being Plaintiffs or Defendants in such Suit, by Motion in open Court, at their Discretion, to make any Rule or Order requiring Satisfaction, upon the Oath of such Patron and his Clerk, who in the said Suit shall contest the Right of the said University to present to such Benefice or Ecclesiastical Living, by Examination of them or either of them, in open Court, or by Commission under the Seal of such Court for Examination of them or either of them, or by Affidavit, as the said Court shall find most proper, in order to the Discovery of any secret Trust, Frauds or Practices, relating to the said Presentation then in Question: and in case it appear to the Court, upon the Examination of such Patron and

Clerk, or either of them, That the said Patron is but a Trustee for some other Person or Persons, that then the said Patron and his Clerk, shall discover who such Person or Persons are, and where he, she, or they live or inhabit: and upon their Refusal to make such Discovery, or to give such Satisfaction, as aforesaid, they shall be punished as Persons that are guilty of a Contempt to the said Court; and in case such Patron or his Clerk shall discover the Person for whom the said Patron is a Trustee, that then and in such Case the said Court, upon Motion made in open Court, shall make a Rule or Order, That the Person or Persons, for whom the said Patron is a Trustee, shall, in the said Court, or before Commissioners to be appointed for that Purpose, under the Seal of the said Court, make, repeat and subscribe the Declaration against Transubstantiation herein before mentioned, and likewise, on Pain of incurring a Contempt against the said Court, give such further Satisfaction upon Oath, touching or relating to the said Trust, as the said Court shall think fit; and such Person so required to make, repeat and subscribe the said Declaration, and refusing or neglecting so to do, shall be esteemed as a Popish Recusant Convict, in respect of such Presentation.

No. 19. 12 Anne, c. 14.

VI. And be it further enacted, That the Answer of such Patron and Patrons, and the Person for whom he or they are any ways intrusted, and his and their Clerk, or any of them, and his and their or any of their Examinations and Affidavits taken, as aforesaid, by Order of any Court where such *Quare Impedit* shall be depending, or by any Archbishop, Bishop, or other Ordinary, or the Commissioners, as aforesaid, (which Examinations shall therefore be reduced into Writing, and signed by the Party examined) shall be allowed as Evidence against such Patron so presenting, and his Clerk.

The Answer of such Patron, &c. to be allowed as Evidence.

VII. Provided always, That no such Bill, nor any Discovery to be made by any Answer thereunto, or to any such Examination, as aforesaid, shall be made use of to subject any Person making any such Discovery, or not answering such Bill, to any Penalty or Forfeiture, other than the Loss of the Presentation then in Question.

Persons making such Discovery liable only to the Loss of the Presentation.

VIII. And it is hereby further enacted, That in case of any such Bill or Bills of Discovery, as aforesaid, exhibited in any Court of Equity by the Chancellor and Scholars of either of the said Universities, or their Presentee, no Lapse shall incur, nor Plenarty be a Bar, against such Chancellor and Scholars, in respect of the Benefice or Ecclesiastical Living, touching which such Bill shall be so exhibited, till after three Months from the Time that the Answer to such Bill shall be put in, or the same be taken *pro Confesso*, or the Prosecution thereof deserted; provided that such Bill or Bills be exhibited before any Lapse incurred.

If such Bill be exhibited by the University, no Lapse shall incur, &c till three Months after the Answer put in, &c.

'IX. And whereas it hath been doubted whether any Writ of '*Quare Impedit* brought by the respective Universities, for any Presentation, Nomination, Collation or Donation, pursuant to the said 'recited Acts, or either of them, may be brought by them, in or by 'the Name of Chancellor and Scholars, or ought to be by their true 'Name of Incorporation respectively;' It is hereby declared, That the said respective Chancellors and Scholars of the said Universities are by this Act, and were by the said former Acts, intitled to sue any Writ of *Quare Impedit* by the Name of Chancellor and Scholars of the University of *Oxford*, and Chancellor and Scholars of the University of *Cambridge* respectively, or by their respective proper Names of Incorporation, at their Election.

The University may sue any Writ of Quare Impedit, &c.

X. And be it further enacted, That in case of any Trust for any Papist, or Person professing the Popish Religion, confessed or discovered in and by any Answer to such Bill, as aforesaid, or such Examination, as aforesaid, it shall and may be lawful for the Court

The Court may inforce the Producing of Deeds relating to Trusts.

No. 19. 12 Anne, c. 14.

where such Discovery shall be made, and such Court is hereby enabled to inforce the producing of the Deeds creating and relating to the said Trusts, by such Methods as they shall find proper.

Not to extend to Scotland.

XI. Provided always, That nothing herein before contained shall extend to that Part of *Great Britain* called *Scotland*.

The Lords of Justiciary may inflict the same Punishment on Jesuits, &c. which the Privy Council of Scotland was impowered to do by an Act passed in that Kingdom.

'XII. And whereas by the Determination of the late Privy 'Council of *Scotland*, the Punishments contained in an Act of the 'Parliament of *Scotland*, passed in the eighth Session of the first 'Parliament of King William, intituled, *An Act for preventing the 'Growth of Popery*, cannot be fully put in Execution against Jesuits, 'Priests, and other trafficking Papists, who disguise and shelter them- 'selves under borrowed Names, to avoid the Penalty of the Law;' It is therefore hereby enacted, and be it enacted by the Authority aforesaid, That the Lords of her Majesty's Justiciary in *Scotland* be hereby impowered to inflict the same Punishment against Jesuits, Priests, and other trafficking Papists, which the Privy Council of *Scotland* was impowered to do by the aforesaid Act of Parliament.

No. 20.

1 Geo. I. c. 10.—An Act for making making more effectual her late Majesty's Gracious Intentions for augmenting the Maintenance of the poor Clergy.*

1 Geo. I. c. 10. 2 Ann. c. 11. 5 Ann. c. 24. 7. Ann. c. 27.

I. WHEREAS it is necessary for the Governors of the Bounty of Queen *Anne*, for the Augmentation of the Maintenance of the poor Clergy, in order to the more regular making proper Augmentations, to be informed, as exactly as may be, of the clear improved yearly Value of the Maintenance of all such Parsons, Vicars, Curates and Ministers, officiating in any Church or Chapel within that Part of *Great Britain* called *England*, the Dominion of *Wales*, or the Town of *Berwick* upon *Tweed*, where the Liturgy, and Rites of the Church of *England*, as now by Law established, 'are or shall be used and observed, whose Maintenance is intended to 'be augmented:' Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Athority of the same, That the respective Bishops of every Diocese, and the Guardians of the Spiritualties *sede vacante*, shall be and are hereby impowered and required, from Time to Time, as they shall see Occasion, and as may best serve the Purposes of the said Bounty to the Poor Clergy, as well by the Oath of two or more credible Witnesses (which they, or others commissioned by them under their Hands and Seals, are hereby impowered to administer) as by all other lawful Ways and Means, to imform themselves of the clear improved yearly Value of every Benefice with Cure of Souls Living and Curacy, and of the true and clear improved yearly Value of the Maintenance of every Parson, Vicar, Curate, and Minister, officiating in any such Churches or Chapels, as aforesaid, within their several Dioceses, or within any Peculiars or Places of exempt Jurisdiction within the Bounds and Limits of their respective Dioceses, or adjoining and contiguous thereunto, although the same be exempt from the Jurisdiction of any Bishop in other Cases, and how such yearly Values arise, with the other Circumstances thereof, and the same, or

The Bishops shall inform themselves of the yearly Value of every Benefice, &c.

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* Provisions of a similar Nature are made by the Irish Statute, 10 Geo. I. c. 7.

No 20. 1 Geo. I. c. 10.

such of them whereof they shall have fully informed themselves, from Time to Time, with all convenient Speed, to certify under their respective Hands and Seals or Seals of their respective Offices, to the said Governers of the Bounty of Queen ANNE, for the Augmentation of the Maintainance of the poor Clergy, for their better Information in the Premisses.

and certify the same to the Governors

II. Provided always, and be it enacted by the Authority aforesaid, That where by Certificates duly returned into her Majesty's Court of Exchequer at *Westminster*, pursuant to an Act made in the Parliament held in the fifth Year of the Reign of her said late Majesty, intituled, *An Act for discharging small Livings from their First-fruits and Tenths, and all Arrears thereof*, and one other Act made in the sixth Year of the Reign of her said late Majesty, intituled, *An Act to enlarge the Time for returning the Certificates of all Ecclesiastical Livings, not exceeding the yearly Value of fifty Pounds: As also for discharging all Livings of that Value from the Payment of First-fruits; and for allowing Time to Archbishops and Bishops, and other Dignitaries for Payment of their First-fruits*; or either of them, or made good by this Act, the yearly Value of any Livings, not exceeding the clear yearly Value of fifty Pounds, are particularly and duly expressed and specified, such Certificates shall ascertain the yearly Values of such Livings, in Order to their being augmented by the said Governors, and no new or different Valuation thereof shall be returned to the said Governors by Virtue of this present Act

Certificates returned into the Exchequer by 5 Ann. c. 24, and 6 Ann. c. 27, shall ascertain the Value of Livings not exceeding 50l. per Ann.

'III. And whereas by her late Majesty's Letters Patent under 'her Great Seal, bearing Date the third Day of *November* in the 'third Year of her Reign, incorporating the Governors of the Bounty 'of Queen ANNE, for the Augmentation of the Maintenance of the 'poor Clergy, the said Governors were authorized to consider, con-'sult, advise, agree upon, draw up, prepare and propose in Writing 'to her said Majesty, her Heirs and Successors, such proper and 'necessary Rules, Methods, Directions, Orders, and Constitutions, 'as the said Governors, or any seven or more of them, with such '*Quorum* as is therein directed, should in their Discretions judge 'most convenient to be observed, for and towards the better Rule and 'Government of the said Corporation and the Members thereof, and 'the receiving, accounting for, and managing all and every the 'Revenues thereby granted, or mentioned to be granted, and all 'Arrears thereof, and also for and concerning the distributing, paying, 'and disposing of the same, and all other Gifts and Benevolences 'that should or might be given or bequeathed to the said Corporation 'for the charitable Ends in the said Letters Patent mentioned, for 'the Augmentation of the Maintenance of the poor Clergy aforesaid; 'and such Rules, Methods, Orders, Directions, and Constitutions, 'as should be so proposed, and should be approved, altered or 'amended by her said late Majesty, her Heirs or Successors, and such 'as should be made by her said Majesty, her Heirs and Successors, 'and so signified and declared by her, her Heirs or Successors, under 'her or their Great Seal, her said late Majesty thereby willed should 'be the Rules, Methods, Directions, Orders, and Constitutions, by 'which the Governors of the Bounty of Queen ANNE, for the 'Augmentation of the Maintenance of the poor Clergy and their 'Successors, should receive, manage, govern, apply and dispose her 'said late Majesty's Royal Bounty, and other Gifts and Benevolences 'which should or might after that Time be given or bequeathed to 'the said Corporation (where the Donors thereof should not particu-'larly direct the Application thereof) to and for the Increase of the 'Maintenance of such Parsons, Vicars, Curates, and Ministers

All Rules, Methods, &c. agreed on by the Governors, and proposed to his Majesty, and approved under Sign Manuel, shall be valid.

No. 20.
1 Geo. I. c. 10.

'officiating in any Church or Chapel within the Kingdom of '*England*, Dominion of *Wales*, or Town of *Berwick-upon-Tweed*, 'where the Liturgy and Rites of the Church of *England*, as then by 'Law established, were and should be used and observed, for whom 'a Maintenance was not then sufficiently provided: And whereas 'pursuant to the said Letters Patent of Incorporation, the said 'Governors did agree upon, prepare, and propose to her said late 'Majesty, certain Rules and Constitutions for the better Rule and 'Government of the said Corporation, and her said late Majesty, by 'Letters Patent under her Great Seal, bearing Date the fifth Day of '*March* in the twelfth Year of her Reign, did establish the said Rules 'and Constitutions, reserving to herself, her Heirs and Successors, 'Power, from Time to Time, under her or their Great Seal, to alter 'the same, and to give and make in like Manner such other Rules and 'Constitutions, according to the true Intention of the said Letters 'Patent of Incorporation, as to her said Majesty, her Heirs or Suc-'cessors should seem meet: And whereas a more expeditious and 'easy Method of making and altering the Rules and Constitutions, for 'the better Rule and Government of the said Corporation, may tend to 'the Advancement of the said Charity;' Be it enacted and declared by the Authority aforesaid, That all such Rules, Methods, Orders, Directions and Constitutions, as shall, from Time to Time, be by the said Governors agreed upon, prepared and proposed to his Majesty, his Heirs and Successors, according to the true Intention of the said Letters Patent of Incorporation, and by his Majesty, his Heirs and Successors, approved under his or their Sign Manual, shall be as good, valid and effectual Rules, Methods, Directions, Orders and Constitutions, for the Purposes aforesaid, as if the same were made or established under the Great Seal of his Majesty, his Heirs or Successors.

'IV. And whereas her said late Majesty's Royal Bounty to the poor Clergy was intended to extend, not only to Parsons and Vicars who come in by Presentation or Collation, Institution, and Induction, but likewise to such Ministers who come in by Donation, or are only Stipendiary Preachers or Curates, officiating in any Church or Chapel where the Liturgy and Rites of the Church of *England*, is now by Law established, are and shall be used and observed, most of which are not Corporations, nor have a legal Succession, and therefore are incapable of taking a Grant or Conveyance of such perpetual Augmentation as is agreeable to her said late Majesty's gracious Intentions, and in many Places it would be in the Power of the Impropriator, Donor, Parson, or Vicar, to withdraw the Allowance now or heretofore paid to the Curate or Minister serving the Cure, or, in case of a Chapelry, the Incumbent of the Mother-Church might refuse to employ a Curate, or permit a Minister duty nominated or licensed to officiate in such augmented Chapel, and might officiate there himself, and take the Benefit of the Augmentation, though his Living be above the Value of those which are intended to be first augmented; and the Maintenance of the Curate or Minister would thus be sunk instead of being augmented:' Be it therefore enacted by the Authority aforesaid, That all such Churches, Curacies, or Chapels, which shall at any Time hereafter be augmented by the Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the poor Clergy, shall be, and are hereby declared and established to be, from the Time of such Augmentations, perpetual Cures and Benefices, and the Ministers duly nominated and licensed thereunto, and their Successors respectively, shall be, and be esteemed in Law, Bodies Politick and Corporate, and shall have perpetual Succession by such Name and Names as in the Grant of

All augmented Churches, etc. shall be perpetual Benefices.

and the Ministers shall be Bodies Politick.

No. 20.
1 Geo. I. c. 10

such Augmentation shall be mentioned, and shall have a legal Capacity, and are hereby enabled to take, in Perpetuity, to them and their Successors, all such Lands, Tenements, Tithes, and Hereditaments, as shall be granted unto or purchased for them respectively by the said Governors of the Bounty of Queen ANNE for the Augmentation of the Maintenance of the poor Clergy, or other Persons contributing with the said Governors as Benefactors; any Law or Statute to the contrary notwithstanding: And that the Impropriators or Patrons of any augmented Churches or Donatives, for the Time being, and their Heirs, and the Rectors and Vicars of the Mother Churches whereto any such augmented Curacy or Chapel doth appertain, and their Successors, shall be and are hereby utterly excluded from having or receiving, directly or indirectly, any Profit or Benefit by such Augmentation, and shall from Time to Time, and at all Times, from and after such Augmentation, pay and allow to the Ministers officiating in any such augmented Church and Chapel respectively, such annual and other Pensions, Salaries, and Allowances, which by ancient Custom, or otherwise, of Right, and not of Bounty, ought to be by them respectively paid and allowed, and which they might, by due Course of Law, before the making of this Act, have been compelled to pay or allow to the respective Ministers officiating there, and such other yearly Sum or Allowance as shall be agreed upon (if any shall be) between the said Governors and such Patron or Impropriator, upon making the Augmentation, and the same are and shall be hereby perfectly vested in the Ministers officiating in such augmented Church or Chapel respectively, and their respective Successors.

and shall be enabled to take in Perpetuity such Lands, etc.

Impropriators, etc. of augmented Churches, etc. and the Rectors, etc. of the Mother-Churches, are excluded from the Benefit of such Augmentation, and shall allow the usual Pensions, etc. to the Minister officiating.

V. Provided always, That no such Rector or Vicar of such Mother Church, or any other Ecclesiastical Person or Persons, having Cure of Souls, within the Parish or Place where such augmented Church or Chapel shall be situate, or his or their Successors, shall hereby be divested or discharged from the same; but the Cure of Souls, with all other Parochial Rights and Duties, (such Augmentation and Allowances to the augmented Church or Chapel, as aforesaid, only excepted) shall hereafter be and remain in the same State, Plight, and Manner, as before the making of this Act, and as if this Act had not been made.

No Rectors, etc. of Mother Churches to be discharged from Cure of Souls.

'VI. And for continuing the Succession in such augmented 'Cures, hereby made perpetual Cures and Benefices, and that the 'same may be duly and constantly served.' Be it enacted by the Authority aforesaid, That in Case such augmented Cures be suffered to remain void by the Space of six Months, without any Nomination within that Time of a fit Person to serve the same (by the Person or Persons having the Right of Nomination thereunto) to the Bishop or other Ordinary, within that Time, to be licensed for that Purpose, the same shall lapse to the Bishop or other Ordinary, and from him to the Metropolitan, and from the Metropolitan to the Crown, according to the Course of Law used in Cases of presentative Livings and Benefices, and the Right of Nomination to such augmented Cure may be granted or recovered, and the Incumbency thereof may and shall cease and be determined, in like Manner, and by the like Methods, as the Presentation to, or Incumbency in any Vicarage Presentative may be now respectively granted, recovered, or determined.

Augmented Cures remaining void six Months, shall lapse to the Bishop, etc.

VII. Provided always, That in case the Person or Persons entitled to nominate in such augmented Cure shall suffer Lapse to incur, but shall nominate before any Advantage taken thereof by the Ordinary, Metropolitan, or Crown, respectively, that such Nomination shall be as effectual as if made within six Months, although so much Time be before elapsed, as that the Title of Lapse be vested in the Crown.

No. 20.
1 Geo. I. c. 10.

" VIII. And in as much as by the said Rules established by her ' said late Majesty, under her Great Seal, for the Management of the ' aforesaid Royal Bounty, her said late Majesty was pleased to manifest ' her gracious Intentions to invite private Contributions towards ' augmenting the Maintenance of the poor Clergy, by ordering, ' amongst other Things, That to encourage Benefactions from others, ' and thereby, the sooner to complete the Good that was intended by ' her said late Majesty's Bounty, the said Governors may give the Sum ' of two hundred Pounds (which is the stated Sum allowed to each ' Cure which shall be augmented) to Cures not exceeding thirty-five ' Pounds *per Annum*, where any Person or Persons will give the same ' or greater Sum or Value in Lands or Tithes: And in as much as ' the Right of Presentation, or Nomination to small Livings, is of ' inconsiderable Value, and yet it may be a great Inducement to such ' Benefactions, if the Benefactors may have some Right of Presenta- ' tion or Nomination to the Cure which himself contributes to ' augment,' Be it therefore further enacted, That all Agreements with such Benefactor or Benefactors, with the Consent and Approbation of the said Governors, touching the Patronage or Right of Presentation or Nomination to any such augmented Cure, made or to be made for the Benefit of such Benefactor and Benefactors, his, her, or their Heirs or Successors, by the King's most Excellent Majesty, his Heirs and Successors, under his and their Sign Manuel, or by any Bodies Politick or Corporate, or by any Person or Persons being of the full Age of twenty-one Years, having an Estate of Inheritance either in Fee-simple, or Fee-tail, in their own Right, or in the Right of their Churches, or Wives, or jointly with their Wives, made before Coverture, or after, or having an Estate for Life, or for Years determinable upon his and their own Life and Lives, with Remainder in Fee-simple or Fee-tail to any Issue of his or their own Bodies, in such Patronage, or Right of Presentation or Nomination in Possession, Reversion or Remainder, shall be respectively good and effectual in the Law against his Majesty, his Heirs and Successors, or against all and every such Bodies Politick and Corporate, or against the Persons so agreeing, their Wives, Heirs and Successors respectively, and every of them, and against all and every their Issue, and against every other Person and Persons claiming in Remainder and Reversion after such Estate-tail, as aforesaid, according to the Form of such Agreement; and the Advowson, Patronage, and Right of Presentation and Nomination to such augmented Churches and Chapels shall be vested in such Benefactors, their Heirs and Successors, as against his Majesty, his Heirs and Successors, or the said Bodies Politick and Corporate, and their Successors, or the said respective Persons as aforesaid, as fully, and in like Manner and Form, as if the same had been granted by his said Majesty, his Heirs or Successors, under his and their Great Seal, and as if such Bodies Politick or Corporate had been free from any Restraint, and as if such other Persons so agreeing had been sole seized in his and their own Right of such Advowson, Patronage, Right of Presentation and Nomination, and had granted the same to such Benefactors, their Heirs and Successors respectively, according to such Agreements.

S. Agreements with Benefactors touching the Patronage of augmented Cures, shall be good in Law; and the Advowson, etc. shall be vested in such Benefactors.

IX. And be it further enacted, That the Agreements of Guardians for and on Behalf of Infants or Idiots under their Guardianships, shall be as good and effectual to all Intents and Purposes, as if the said Infants or Idiots had been of full Age, and of sound Mind, and had themselves entered into such Agreements.

Agreements of Guardians shall bind Infants, etc.

X. Provided always, That in Case of any such Agreement, as aforesaid, by any Parson or Vicar, the same shall be with the Consent and Approbation of his Patron and Ordinary.

No. 20.
1 Geo. I. c. 10.

XI. Provided also, That in Case of any such Agreement, as aforesaid, made by any Person seized in Right of his Wife, the Wife shall be a Party to the Agreement, and shall seal and execute the same.

Such Agreements shall be effectual for supplying vacant Cures.

'XII. And in as much as such Benefactors are to be considered, ' in some Degree, as Founders and Patrons of Churches;' Be it further enacted, That such Agreements so made, as aforesaid, shall be as effectual for the supplying Cures vacant at the Time of such Augmentation made or proposed, as for the Advowson or Nomination to future Vacancies.

The Estate settled for Augmentation may be exchanged.

XIII. And be it further enacted by the Authority aforesaid, That it shall and may be lawful, with the Concurrence of the said Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the poor Clergy, and the Incumbent, Patron, and Ordinary of any augmented Living or Cure, to exchange all, or any Part of the Estate settled for the Augmentation thereof, for any other Estate in Lands or Tithes, of equal or greater Value, to be conveyed to the same Uses.

Augmented Donatives to be visited by the Bishop.

XIV. And be it further enacted by the Authority aforesaid, That all such Donatives which are now exempt from all ecclesiastical Jurisdiction, and shall be augmented by Virtue of the Powers given by this Act, shall be subject to the Visitation and Jurisdiction of the Bishop of the Diocese wherein such Donative is, to all Intents and Purposes of Law whatsoever.

XV. Provided always; That no Donative shall be augmented without the Consent of the Patron or Patrons in Writing, under his or their Hands and Seals first had and obtained.

The Governors may agree with the Patron, etc. of any Donative etc. for an Allowance to the Minister of such augmented Donative, etc.

XVI. Provided also, That where it shall fall to the Lot of any Donative, Curacy, or Chapelry, to receive an Augmentation from the said Bounty, according to the Rules already established, or hereafter to be established, it shall and may be lawful to and for the Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the poor Clergy, and they are hereby impowered, before they make the same Augmentation, to treat and agree with the Patron of any Donative, Impropriator of any Rectory impropriated without Endowment of any Vicarage, or Parson or Vicar of any Mother Church (as the Case shall happen to be) for a perpetual yearly, or other Payment or Allowance to the Minister or Curate of such augmented Donative, Curacy, or Chapelry, and his Successors, to be made in all succeeding Times by such Patron, Impropriator, Parson or Vicar, and his and their Heirs and Successors, and for charging and subjecting the impropriate Rectory, or the Mother Church, or Vicarage therewith, and thereunto, in such Manner, and with such Remedies as shall be thought fit; and such Agreements made with the King's most Excellent Majesty, his Heirs and Successors, under his or their Sign Manuel, or with any Bodies Politick or Corporate, or any other Person or Persons having any Estate or Interest, in Possession, Reversion, or Remainder, in any such impropriate Rectory in his or their own Right, or in Right of his or their Churches or Wives, or with the Guardian or Guardians of any Person or Persons having such Estate or Interest, or with any Parson or Vicar of any Mother-Church, shall be as effectual to all Intents and Purposes with Respect to such Charges, as Agreements made with his Majesty, his Heirs and Successors, or with the same Person or Persons, Bodies Politick or Corporate respectively, touching the Patronage or Right of Presentation or Nomination to the same Cures, touching which such Agreements shall be respectively made; and in Case such Impropriator, other than the King's Majesty, his Heirs and Successors, and such Parson or Vicar, will not or shall not make

And if such Impropriator (other than the King) will not agree the Governors may refuse such Augmentation.

No. 20.
1 Geo. I. c. 10.

such Agreement with the said Governors of the Bounty of Queen ANNE for the Augmentation of the Maintenance of the poor Clergy; It shall and may be lawful to and for the said Governors to refuse such Augmentation, and to apply the Money arising from the late Queen's said Bounty, which ought to have been employed therein for augmenting some other Cure, according to the Rules then in Force.

The Certificate for the Diocese of Chichester, remaining in the Exchequer, shall be as effectual as if it had been returned in due Time.

'XVII. And whereas the before-mentioned Acts of Parliament, 'of the fifth and sixth Years of the Reign of her said late Majesty, 'were, for the Diocese of *Chichester*, not executed in due Time, and 'in many Dioceses not with that exact Certainty of the yearly Values 'and Distinction of Medieties in the Certificates, as regularly ought 'to have been; and some small Prebends in Cathedral Churches 'were, by Reason of their being Dignities, omitted in some Certifi-'cates, although they have the Cure of Souls thereunto annexed, and 'are therefore Livings with Cure of Souls within the Words and 'Meaning of the said Acts: For supplying the Defects in the 'Execution of the said former Acts of Parliament;' Be it enacted by the Authority aforesaid, That the Certificate for the Diocese of *Chichester*, dated the Twenth-fourth Day of *December*, One Thousand Seven Hundred and Eight, which was received in the Court of Exchequer at *Wesminster*, and is now remaining there, shall be as effectual, to all Intents and Purposes, as if the same had been sealed and returned into the said Court of Exchequer, within the Times limited by the said respective Acts of Parliament in that Behalf made; and also that all and every the Churches, Vicarages, and Livings, in and by the said Certificate, or in and by the Certificates made and returned in due Time, or any of them, certified to be under fifty Pounds *per Annum*, and each Mediety therein, shall be entitled to, and have the Benefit of the said respective Discharges by the said several Acts of Parliament, as fully, to all Intents and Purposes, as if the precise yearly Value had been expressed, and the Medieties distinguished in such Certificate and Certificates: And further, that it shall and may be lawful to and for the said Governors of the Bounty of Queen ANNE for the Augmentation of the Maintenance of the poor Clergy, under their common Seal, to be affixed at a Court of the said Governors, and under the Hands of the Governors then present, to certify into the Court of Exchequer the Names of such Prebends in Cathedral Churches, under the yearly Value of fifty Pounds, the Prebendaries whereof have the immediate Cure of Souls of the respective Parishes whereof such Prebends are denominated, although the same were not named in any former Certificate; and such Certificate and Certificates of the said Governors, being returned into the said Court of Exchequer, shall be as effectual to all Intents and Purposes of the said two before-mentioned Acts of Parliament, as if the Prebends therein named had been duly certified within the Times in the said Acts limited, and by the Persons, and in the Manner therein directed.

And the Governors may certify into the Exchequer the Prebends under the yearly Value of 50l. tho' not named in any former Certificate.

Livings not certified, which the Bishops may certify before March 25, 1716.

'XVIII. And whereas notwithstanding the utmost Diligence of 'the Bishops to inform themselves of, and certify into his Majesty's 'Court of Exchequer, all the Livings in their respective Dioceses un-'der the clear improved yearly Value of Fifty Pounds, in pursuance of 'the said Acts, the several Livings within the respective Dioceses 'hereafter named, though supposed to be under the Value of Fifty 'Pounds *per Annum*, have either not been certified, or, if certified, 'the Certificates of them have been lost, or not duly entered, or by 'some other Mistakes it has so happened that the said Livings have 'not yet had the Benefit designed them by the said Acts;' Be it further enacted by the Authority aforesaid, That it shall and may be law-

ful for the Bishops of the said Dioceses, at any Time before the Twenty-fifth Day of *March* One Thousand Seven Hundred and Sixteen, to certify into the Court of Exchequer the Livings following, or such of them as shall appear to the respective Bishops to be under the Value of Fifty Pounds *per Annum*, (viz.) In the Diocese of *York*, the Rectory of *Saint Michael apud Pontem de Ouze* in the City of *York*, the Vicarage of *Skipwith*, the Vicarage of *Kilham*, the Vicarage of *North-Leverton*, the Vicarage of *Norwell Overhall*: In the Diocese of *Bangor*, the Vicarage of *Lanunda*, the Vicarage of *Llanfair Isgaer*, the Vicarage of *Llanor*, the Vicarage of *Nevin*, the Vicarage of *Abererch*, the Vicarage of *Conway*, the Vicarage of *Dwygyfylche*: In the Diocese of *Carlisle*, the Rectory of *Kirkbride*, the Rectory of *Dufton*, the Vicarage of *Edenhall*: In the Diocese of *Chichester*, the Vicarage of *Sela*, the Rectory of *Beatæ Mariæ* in *Westout Lewis*, the Rectory of *Chalton*, the Rectory of *Winchelsea*, the Vicarage of *Bernehill*: In the Diocese of *Saint David's*, the Vicarage of *Merchir* alias *Mathre*, the Vicarage of *Saint Winnock* alias *Saint Twinnells*: In the Diocese of *Litchfield* and *Coventry*, the Vicarage of *Hartington*, the Vicarage of *Saint Mary's* in *Litchfield*, the South Mediety of *Darleigh*, the Vicarage of *Glossop*: In the Diocese of *Lincoln*, the Rectory of *Bellew* alias *Hellow*, the Vicarage of *Elsham*, the Rectory of *Normanby*, the Rectory of *Snarford*, the Vicarage of *Buckingham*, the Rectory of *Okeney*, the Vicarage of *Mentmore*, the Vicarage of *Missenden Magna*, the Vicarage of *Swanburn*: In the Diocese of *Norwich*, the Vicarage of *South Walsam*, the Rectory of *Framlinghams*, the Vicarage of *Burnham-Overy*, the Vicarage of *Scarning*, the Vicarage of *Nectons*, the Vicarage of *Melton Parva*, the Rectory of *Repham Medietas & altera Medietas*, the Vicarage of *Thurston*, the Vicarage of *Colkirke*, the Rectory of *Catfields*, the Vicarage of *Henly*, the Rectory of *Newborn*, the Rectory of *Culpho*, the Rectory of *Dunwich Johannis*, the Rectory of *Pakefields*, the Rectory of *Melford Longa*, the Vicarage of *Finborow Parva*, the Rectory of *Willingham* alias *Ellough*, the Rectory of *Bromeswell* in *Wilford*. In the Diocese of *Oxford*, the Vicarage of *Stanton Harcourt*: In the Diocese of *Peterborough*, the Vicarage of *Cransley*: In the Diocese of *Winchester*, the Vicarage of *Shalford*, and the Vicarage of *Ellingham*: And the said Livings so certified, shall have the Benefit of the Two fore-mentioned Acts of Parliament, as effectually, to all Intents and Purposes, as if they had been duly certified within the Time limited by the said Acts.

No. 20. 1 Geo. I. c. 10.

and they shall have the Benefit of the Acts of 5 Anne, c. 24 and 6 Anne, c. 27.

The Governors impowered to administer Oaths.

XIX. And be it further enacted by the Authority aforesaid, That the Courts and Committees of the said Governors of the Bounty of [Qu]een ANNE, for the Augmentation of the Maintenance of the poor [...] [sha]ll have Power and Authority, and are hereby autho[rized] [and] impowered, from Time to Time, to administer an Oath to [...] Person and Persons as shall at any Time give them Information, [or be] examined of or concerning any Matter or Thing relating to the Execution of this or the said former Acts of Parliament, or any way concerning the Trust in them reposed.

Augmentations, &c. to be entered, and the Entries to [...]

XX. And be it further enacted by the Authority aforesaid, That [...] [Au]gmentations, Certificates, Agreements, and Exchanges [...] [t]o be made, by Virtue of or in pursuance of this Act, be carefully examined and entered in a Book to be provided and [...] by the Governors for that Purpose, the said Entries being approved at a Court of the said Governors, and attested by the Governors then present, shall be taken as Records, and the true Copies thereof, or of the said Entries, being proved by one or more credible Witnesses, shall be deemed, taken, and adjudged to be good and sufficient Evi-

No. 20., 1 Geo I. c. 10. dence in Law, touching the Matters contained therein, or relating thereto.

'XXI. And to the End that Churches and Chapels may at all 'Times be capable of receiving Augmentations for the Maintenance 'of the Ministers thereof;' Be it enacted by the Authority aforesaid, That if the Governors of the Bounty of Queen ANNE for the Augmentation of the Maintenance of the poor Clergy, shall by any Deed or Instrument in Writing under their common Seal, allot or apply to any Church or Chapel, any Lands, Tithes, or Hereditaments, arising from the said Bounty of her said late Majesty, or from private Contribution or Benefaction, or from all or any the Ways aforesaid, and shall declare, That the same shall be for ever annexed to such Church or Chapel, then such Lands, Tithes, and Hereditaments, shall from thenceforth be held and enjoyed, and go in Succession with such Church and Chapel for ever; and such Augmentation so made shall be good and effectual, to all Intents and Purposes whatsoever, whether such Church or Chapel, for which such Augmentation is intended, be then full or vacant of an Incumbent or Minister, provided such Deed or Instrument be inrolled in the High Court of Chancery within Six Months after the Day of the Date thereof. [Vide 5 Geo. I. c. 10.]

Lands, &c. allotted to any Church, &c. by Deed under the Governors Seal, shall go in Succession, &c.

such Deed being inrolled in Six Months.

No. 21.

P. 11 George II. c. 17.—An Act for securing the Estates of Papists conforming to the Protestant Religion, against the Disabilities created by several Acts of Parliament relating to Papists; and, **For rendering more effectual the several Acts of Parliament made for vesting in the two Universities in that Part of Great Britain called England the Presentation of Benefices belonging to Papists.**

11 Geo. II. c. 17. Sec. 5. 12 Anne, stat 2. c. 14. 'V. And whereas by an Act made in the twelfth Year of the 'Reign of Queen ANNE, for rendering more effectual an Act made in 'the third Year of the Reign of King JAMES the First, intituled, '*An Act to prevent and avoid Dangers which may grow by Popish 'Recusants*; and also one other Act made in the first Year of the 'Reign of King WILLIAM and Queen MARY, intituled, '*An Act to 'vest in the two Universities the Presentations of Benefices belonging 'to Papists*; it was enacted, That every Papist or Person making 'Profession of the Popish Religion, and every Child, not being a 'Protestant, under the Age of one and twenty Years, of every such 'Papist or Person professing the Popish Religion, and every 'Mortgagee, Trustee, or Person any ways intrusted, directly or 'indirectly, mediately or immediately, by or for any such Papist or 'Person making Profession of the Popish Religion, or such Child 'as aforesaid, whether such Trust be declared by Writing or not, 'should be disabled and made incapable to present, collate, or 'nominate to any Benefice, Prebend, or Ecclesiastical Living, School, 'Hospital, or Donative, or to grant any Avoidance of any Benefice, 'Prebend, or Ecclesiastical Living, and that every such Presentation, 'Collation, Nomination, and Grant, and every Admission, Institu-'tion, and Induction to be made thereupon, should be utterly void 'and of no Effect to all Intents, Constructions, and Purposes what-

and 1 W. and M. st 1. c 26.

No. 21.
11 Geo. II. c. 17.

'soever; and that in every such Case the Chancellor and Scholars of 'the University of *Oxford*, and the Chancellor and Scholars of the 'University of *Cambridge*, should respectively have the Presentation, 'Nomination, Collation, and Donation of and to every such Benefice, 'Prebend, or Ecclesiastical Living, School, Hospital, and Donative, 'set, lying, and being in the respective Counties, Cities, and other 'Places and Limits in the said Act of the third Year of King James 'mentioned, as in and by the said Act is directed and appointed in 'the Case of a Popish Recusant Convict: And whereas for the better 'Discovery of all secret Trusts and fraudulent Conveyances made by 'Papists or Persons making Profession of the Popish Religion, of 'their Advowsons and Right of Presentation, Nomination, and 'Donation to any Benefices or Ecclesiastical Living, several Provi'sions were made by the said Act of the twelfth Year of the Reign of 'Queen Anne, which have been fraudulently evaded by Persons 'obtaining from such Papists, without a full and valuable Considera'tion, Grants of such Advowsons and Right of Presentation, 'Nomination, and Donation, upon Confidence only, that such 'Grantees will, at the Request of such Papists, present to such 'Benefices or Ecclesiastical Livings, Clerks nominated by such 'Papists, who have been presented accordingly, contrary to the true 'Intent and Meaning of the said Acts, and to the great Hurt of the 'Protestant Interest of this Kingdom;' Be it therefore enacted by the Authority aforesaid, That every Grant to be made from and after the sixth Day of *May*, One Thousand Seven Hundred and Thirty-eight, of any Advowson or Right of Presentation, Collation, Nomination, or Donation, of and to any Benefice, Prebend, or Ecclesiastical Living, School, Hospital, or Donative, and every Grant or any Avoidance thereof, by any Papist, or Person making Profession of the Popish Religion, or any Mortgagee, Trustee, or Person any ways intrusted directly or indirectly, mediately or immediately, by or for any such Papist or Person making Profession of the Popish Religion, whether such Trust be declared by Writing or not, shall be null and void, unless such Grant shall be made *bona fide*, and for a full and valuable Consideration to and for a Protestant Purchaser or Protestant Purchasers, and merely and only for the Benefit of a Protestant or Protestants; and that every such Grantee, or Person claiming under any such Grant, shall be deemed to be a Trustee for a Papist or Person professing the Popish Religion as aforesaid, within the true Intent and Meaning of the said Act; and that all such Grantees, or Persons claiming under such Grants, and their Presentees, shall be compelled to make such Discovery relating to such Grants and Presentations made thereupon, and by such Methods, as in and by the said Act of the twelfth Year of the Reign of Queen Anne, are directed in the Case of Trustees of Papists or Persons professing the Popish Religion; and that every Devise to be made from and after the said sixth Day of *May* by any Papist or Person professing the Popish Religion, of any such Advowson or Right of Presentation, Collation, Nomination or Donation, or any such Avoidance, with Intent to secure the Benefit thereof to the Heirs or Family of such Papist or Person professing the Popish Religion, shall be null and void; and that all such Devisees, and Persons claiming under such Devises, and their Presentees, shall in the like Manner, and by such Methods, be compelled to discover, whether to the best of their Knowledge and Belief, such Devises were not made with the said Intent.

Every Grant made after 6 May, 1738, of any Ecclesiastical Living, etc. by any Papist, etc. void,

unless made for a valuable Consideration to a Protestant Purchaser, etc.

Every Devise made of any Ecclesiastical Living after 6 May 1738, by a Papist, with Intent, etc. void.

No. 22.

23 Geo. II. c. 28.—An Act to explain Part of an Act passed in the thirteenth and fourteenth Years of the Reign of King CHARLES the Second, for the Uniformity of Publick Prayers, and Administration of Sacraments; and also Part of an Act passed in the thirteenth Year of the Reign of Queen ELIZABETH, for the Ministers of the Church to be of Sound Religion.

23 Geo II. c. 28. 13 and 14 Car II. c. 4. sec 6.

'WHEREAS by an Act passed in the thirteenth and fourteenth ' Years of the Reign of the late King CHARLES the Second, ' intituled, *An Act for the Uniformity of Public Prayers, and Administration of Sacraments, and other Rites and Ceremonies; and for establishing the Form of making, ordaining, and consecrating Bishops, Priests, and Deacons, in the Church of* England; it was ' enacted, That every Person who should thereafter be presented or ' collated, or put into any Ecclesiastical Benefice or Promotion, within ' *England,* the Dominion of *Wales,* and Town of *Berwick* upon ' *Tweed,* should, in the Church, Chapel, or Place of Public Worship, ' belonging to his said Benefice or Promotion, within two Months ' next after that he shall be in the actual Possession of the said Ecclesiastical Benefice or Promotion, upon some Lord's Day, openly, ' publicly, and solemnly read the Morning and Evening Prayers appointed to be read by and according to the Book of Common Prayer ' at the Times thereby appointed or to be appointed; and after such ' reading thereof, should openly and publicly, before the Congregation ' there assembled, declare his unfeigned Assent and Consent to the ' Use of all Things therein contained and prescribed, according to the ' Form therein before appointed; and that all and every such Person ' who should (without some lawful Impediment, to be allowed and ' approved by the Ordinary of the Place) neglect or refuse to do the ' same within the Time aforesaid, (or, in case of such Impediment, ' within one Month after such Impediment removed) should *(ipso facto)* be deprived of all his said Ecclesiastical Benefices and Promotions; and that from thenceforth, it should and might be lawful to ' and for all Patrons and Donors of all and singular the said Ecclesiastical Benefices and Promotions, or any of them, according to their ' respective Rights and Titles, to present or collate to the same, as ' though the Person or Persons so offending or neglecting were dead: ' And it was by the said Act (amongst other Things) further enacted, ' That every Parson, Vicar, Curate, Lecturer, and every other Person ' in Holy Orders, should, before his or their respective Admission to ' be Incumbent, or have Possession of any Parsonage, Vicarage, or ' any Curate's Place or Lecture, subscribe the Declaration or Acknowledgment therein directed, before the respective Archbishop, Bishop, ' or Ordinary of the Diocese; upon Pain that all and every of the ' Persons afore-mentioned, failing in such Subscription, should lose ' and forfeit such respective Parsonage, Vicarage, Curate's Place or ' Lecture, and should be utterly disabled and *(ipso facto)* deprived of ' the same; and that every such respective Parsonage, Vicarage, ' Curate's Place, or Lecture, should be void, as if such Person so ' failing were naturally dead: and that after such Subscription made, ' every Parson, Vicar, Curate, or Lecturer should procure a Certificate ' under the Hand and Seal of the respective Archbishop, Bishop, or ' Ordinary of the Diocese (who were thereby enjoined and required, ' upon Demand, to make and deliver the same), and should publicly

No. 22.
23 Geo. II. c. 28.

'and openly read the same, together with the Declaration or Acknowledgment therein mentioned, upon some Lord's Day within Three Months then next following, in his Parish Church where he was to officiate, in the Presence of the Congregation there assembled, in the Time of Divine Service; upon Pain, that every Person failing therein, should lose such Parsonage, Vicarage, or Benefice, Curate's Place or Lecturer's Place respectively, and should be utterly disabled, and *(ipso facto)* deprived of the same; and that the said Parsonage, Vicarage, or Benefice, Curate's Place or Lecturer's Place should be void, as if he were naturally dead: And whereas Doubts have arisen, whether the Allowance and Approbation of any lawful Impediment before-mentioned doth extend to both the said before-recited Cases, or whether any Archbishop, Bishop, or other Ordinary, hath Power by the said Act to allow and approve of any lawful Impediment, as to reading the said last-mentioned Certificate and Declaration, within the Time limited by the said Act:' For the obviating thereof, be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That every Allowance and Approbation of any lawful Impediment already given and declared, or which shall hereafter be given and declared, in pursuance of the said Act, by any Archbishop, Bishop, or Ordinary, to any Person for or in respect of not reading in the Church, Chapel, or Place of Public Worship, belonging to his Benefice or Promotion, within Two Months next after that he shall be in the actual Possession of the said Benefice or Promotion, upon some Lord's Day, openly, publicly, and solemnly, the Morning and Evening Prayers, appointed to be read by and according to the said Book of Common Prayer, and for or in respect of not openly and publicly, before the Congregation there assembled, declaring his unfeigned Assent and Consent to the Use of all Things therein contained and prescribed, shall extend, and be construed to extend, to the not reading the said last-mentioned Certificate and Declaration, although the same be not mentioned in the said Allowance and Approbation, for the like Time as the said Allowance and Approbation shall extend to.

Allowance of a lawful Impediment extended to the not reading the Certificate and Declaration, within the Time limited

'II. And whereas by an Act passed in the thirteenth Year of the Reign of Queen ELIZABETH, intituled, *An Act for the Ministers of the Church to be of Sound Religion*; it was (amongst other Things) enacted, That every Person who should be admitted to a Benefice with Cure, except that within Two Months after his Induction, he should publicly read the Articles therein mentioned, in the same Church whereof he should have Cure, in the Time of Common Prayer there, with Declaration of his unfeigned Assent thereunto, should be, upon every such Default *(ipso facto)* immediately deprived: And whereas it hath happened, and may hereafter happen, through Sickness, or other lawful Impediment, that divers Persons have been, and may be hindered from reading the said Articles, and making the said Declaration, within the Time directed by the said Act, and yet such Person after such Sickness or other lawful Impediment removed, hath read, and may hereafter read the said Articles, and make the said Declaration; and it is reasonable that such Persons should be deemed to have complied with the true Intent and Meaning of the said Act;' Be it therefore further enacted by the Authority aforesaid, That every Person who hath already read, or who shall hereafter read the said Articles, and hath made, or shall hereafter make the said Declaration, at the same Time that he did read, or shall hereafter read the Morning and Evening Prayer, and declare his unfeigned Assent and Consent to the Use of all Things

13 Eliz. c. 12.

Persons who shall read the Articles and Declaration at the Time of reading the Morning and Evening Prayer, are declared to have complied.

No. 22: 23 Geo. II. c. 28.

therein contained and prescribed, according to the Directions of the said in part recited Act of the Thirteenth and Fourteenth Years of the Reign of King CHARLES the Second, shall be, and is hereby declared and adjudged to have complied with the true Intent and Meaning of the said Act of the thirteenth Year of the Reign of Queen ELIZABETH, although the same were not, or may not be read within the Space of Two Months after such Person's Induction into any Benefice with Cure; and that every such Person shall, and he is hereby declared to be freed and discharged from any Deprivation or other Forfeiture by Virtue of the said Act; any Thing therein contained to the contrary notwithstanding.

Limitation of this Act.

III. Provided always, That this Act shall not extend to restore any Person to any Parsonage, Vicarage, or Benefice, Curate's Place or Lecturer's Place, which, for want of reading such Certificate and Declaration, within the Time directed by the said first in part recited Act, or of reading the said Articles and Declaration concerning the same, according to the said last-mentioned Act, hath been forfeited or become void, and is already filled up or enjoyed by any Person or Persons whatsoever.

No. 23.

Explained and amended by 21 Geo. III. c. 66.

17 George III. c. 53.—An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses, and other necessary Buildings and Tenements, for the Use of their Benefices.*

17 Geo. III. c. 53.

'WHEREAS many of the Parochial Clergy, for Want of proper 'Habitations, are induced to reside at a Distance from their 'Benefices, by which Means the Parishioners lose the Advantage of 'their Instruction and Hospitality, which were great Objects in the 'original Distribution of Tythes and Glebes for the Endowment of 'Churches:' For Remedy whereof, may it please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the twenty-fourth Day of *June*, One Thousand Seven Hundred and Seventy-seven, whenever the Parson, Vicar, or other Incumbent, of any Ecclesiastical Living, Parochial Benefice, Chapelry, or perpetual Curacy, being under the Jurisdiction of the Bishop or other Ecclesiastical Ordinary, whereon there is no House of Habitation, or such House is become so ruinous and decayed, or is so mean, that one Year's net Income and Produce of such Living will not be sufficient to build, rebuild, or put the same, with the necessary Offices belonging thereto, in sufficient Repair, shall think fit to apply for the Aid and Assistance intended to be given by this Act, it shall and may be lawful for every such Parson, Vicar, or Incumbent (after having procured, from some skilful and experienced Workman or Surveyor, a Certificate, containing a State of the Condition of the Buildings on

Incumbent of any Living, wherein there is no House, etc.

* Several Provisions for the Purposes contemplated by this Act are made by the Irish Statutes, [illegible] W. III. c. 6—12 G. I. c. 10—9 G. II. c. 13—11 & 12 G. III. c. 17—[illegible] III. c. 32. See 1 Gabbett, 533. This Act is often referred to by the Name of Mr. Gilbert's Act, having been brought in by that Gentleman.

No. 28. 17 Geo. III. c. 53.

their respective Glebes, and of the Value of the Timber and other Materials thereupon, fit to be employed in such Buildings or Repairs, or to be sold, and also a Plan and Estimate of the Work proposed to be done (such State and Estimate to be verified upon Oath, taken before some Justice of the Peace, or Master in Chancery, Ordinary or Extraordinary), and laid the same, together with a just and particular Account in Writing, signed by him, and verified upon Oath, taken as aforesaid, of the annual Profits of such Living, before the Ordinary and Patron of the Living, and obtained their Consent to such proposed new Buildings or Repairs, by Writing under their respective Hands, in the Form for that Purpose contained in the Schedule hereunto annexed), to borrow and take up at Interest, in the Manner hereafter mentioned, such Sum or Sums of Money as the said Estimate shall amount unto, after deducting the Value of Timber or other Materials which may be thought proper to be sold, not exceeding Two Years net Income and Produce of such Living, after deducting all Rents, Stipends, Taxes, and other Outgoings, excepting only the Salaries to the Assistant Curate, where such a Curate is necessary; and as a Security for the Money so to be borrowed, to mortgage the Glebe, Tythes, Rents, and other Profits and Emoluments, arising or to arise from such Living, to such Person or Persons who shall advance the same, by one or more Deed or Deeds, for the Term of Twenty-five Years, or until the Money so to be borrowed, with Interest for the same, and such Costs and Charges as may attend the Recovery thereof, shall be fully paid and satisfied, according to the Terms, Conditions, true Intent and Meaning of this Act; which Mortgage Deed or Deeds shall be made in the Forms or to the Effect for that Purpose contained in the said Schedule, and shall bind every succeeding Parson, Vicar, or Incumbent, of such Living, until the Principal and Interest, Costs and Charges, shall be paid off and discharged, as fully and effectually as if such Successor had executed the same.

(with the Consent of the Ordinary and Patron) may borrow Money to build one,

and mortgage the Glebe, &c. for 25 Years.

II. And be it further enacted, That every such Mortgagee shall execute a Counterpart of every such Mortgage, to be kept by the Incumbent for the Time being; and a Copy of every such Deed of Mortgage shall be registered in the Office of the Registrar of the Bishop of the Diocese where the Parish lies, or other Ordinary having Episcopal Jurisdiction therein for the Time being, after having been first examined by him with the Original; which Officer shall register the same, and be intitled to demand and receive the Sum of Five Shillings, and no more, for such Register; and every such Deed shall be referred to upon all necessary Occasions, the Person inspecting the same paying One Shilling for every such Search; and the said Deed, or a Copy thereof, certified under the Hand of the Registrar, shall be allowed as legal Evidence, in case any such Mortgage Deed shall happen to be lost or destroyed.

Every Mortgagee to execute a Counterpart of the Mortgage, to be kept by the Incumbent, &c.

III. Provided always, and be it further enacted, That whenever the Principal and Interest, directed to be paid to the Mortgagee under the several Provisions of this Act, shall be in Arrear and unpaid, for the Space of Forty Days after the same shall become due, it shall and may be lawful for such Mortgagee, his Executors, Administrators, or Assigns, to recover the same, and the Costs and Charges attending the Recovery thereof, by Distress and Sale, in such Manner as Rents may be recovered by Landlords or Lessors from their Tenants by the Laws in being.

Mortgagee may distrain.

IV. And be it further enacted, That the Money so to be borrowed shall be paid into the Hands of such Person or Persons as shall be nominated and appointed to receive and apply the same for the Purposes aforesaid, by the Ordinary, Patron, and Incumbent, by

Money borrowed to be paid to such Persons as Ordinary &c. shall appoint;

No. 23.
17 Geo III c. 53.

Writing under their respective Hands, in the Form for that Purpose contained in the Schedule, after such Nominee shall have given a Bond to the Ordinary, with sufficient Surety, in double the Sum so to be borrowed or raised, with Condition for his duly applying and accounting for the same according to the Directions of this Act; and the Receipt of the Person or Persons so to be nominated shall be a sufficient Discharge to the Person or Persons who shall advance and pay the Money: And the Person or Persons, so to be nominated, shall enter into Contracts with proper Persons for such Buildings or Repairs as shall be approved by the Ordinary, Patron, and Incumbent, and shall be specified in an Instrument written upon Parchment, and signed by them, in the Form for that Purpose contained in the Schedule; and shall inspect and have the Care of the Execution of such Contracts, and shall pay the Money for such Buildings and Repairs, according to the Terms of such Agreements, and shall take proper Receipts and Vouchers for the same; and as soon as such Buildings or Repairs shall be completed, and the Money paid, shall make out an Account of his Receipts and Payments, together with the Vouchers for the same, and enter them in a Book, fairly written, which shall be signed by him, and laid before the Ordinary, Patron, and Incumbent, and examined by them; and when allowed, by Writing under their respective Hands, in the Form for that Purpose contained in the said Schedule, such Allowance shall be a full Discharge to the Person so nominated, in Respect to the said Accounts; and if any Balance shall remain in the Hands of such Nominee or Nominees, the same shall be laid out in some further lasting Improvements in building upon such Glebe, or shall be paid and applied in Discharge of so much of the said principal Debt as such Balance will extend to pay, at the Discretion of the said Ordinary, Patron, and Incumbent, or two of them, of which the said Ordinary to be one, by Order signed by them, in the Form for that Purpose contained in the said Schedule; and an Account shall also be kept, made out, and allowed, of such further Disbursements, in Manner aforesaid: All which Accounts, when made out, completed, and allowed, shall be deposited, with the Vouchers, in the Hands of the said Registrar, and kept by him for the Use and Benefit of the Incumbents of such Living for the Time being, who shall have a Right to inspect the same whenever Occasion may require, paying to such Registrar, or Deputy Registrar, the Sum of one Shilling for every such Inspection.

Who shall contract for the Buildings, &c.

How the Balance shall be disposed of.

Ordinary to cause Inquiry to be made of the Condition of the Buildings when Incumbent entered on the Living, &c.

V. Provided always, and be it further enacted, That every such Ordinary, before he or they shall signify his or their Consent, in Manner aforesaid, shall cause an Inquiry to be made, and certified to him or them by the Archdeacon, Chancellor of the Diocese, or other proper Persons living in or near the Parish where such Buildings are proposed to be made or repaired, in the Forms for that Purpose specified in the said Schedule, of the State and Condition of such Buildings at the Time the Incumbent entered upon such Living or Benefice, how long such Incumbent had enjoyed such Living or Benefice, what Money he had received, or may be intitled to receive, for Dilapidations, and how and in what Manner he had laid out what he had so received; and if it shall appear to them that such Incumbent had, by wilful Negligence, suffered such Buildings to go out of Repair, then to certify the same to the said Ordinary, and also the Amount of the Damage which such Buildings had sustained by the wilful Neglect of such Incumbent; and such Incumbent, if the Ordinary require it, shall pay the same into the Hands of the Nominee or Nominees to be appointed under the Authority of this Act, towards Defraying the Expences of Building or Repairs, before the Ordinary shall give his Consent as aforesaid.

VI. And be it further enacted, That the Incumbent of every such Living or Benefice, in Cases where such Mortgage or Mortgages shall be made as aforesaid, and his Successors for the Time being, shall, and he and they is and are hereby required to pay the Interest arising upon every such Mortgage, yearly, as the same shall become due, or within one Month after, and also five Pounds *per Centum per Annum*, of the Principal remaining due, by yearly Payments; and that every such Incumbent who shall not reside twenty weeks in each Year upon such Living, computing such Year from the Date of the said Mortgage Deed, shall, instead of the said Sum of five Pounds *per Centum per Annum*, pay the Sum of ten Pounds *per Centum per Annum*, of the Principal remaining due, by yearly Payments, such Payments to be respectively made at the same Time such Interest shall be paid, until the whole Principal Money and Interest shall be fully paid and discharged; and that every such Incumbent who shall pay only five Pounds *per Centum per Annum* of such Principal Money, shall, at the Time he pays the same, produce and deliver to the Mortgagee a Certificate under the Hands of two Rectors, Vicars, or officiating Ministers, of some Parishes near adjoining, signifying that he had resided twenty Weeks upon the said Living or Benefice, within the Year for which such Payment became due, according to the Regulations aforesaid; which Certificate shall be in the Form, or to the Effect, contained in the said Schedule; and that every such Incumbent shall, annually, at his own Expence, from the Time such Buildings, authorised to be made by this Act, shall be completed, insure, at one of the Publick Offices established in *London* or *Westminster* for Insurance of Houses and Buildings, the House and other Buildings upon such Glebe, against Accidents by fire, at such Sum of Money as shall be agreed upon by the Ordinary, Patron, and Incumbent; and in Default of the Payment of either the Principal or Interest, in Manner aforesaid, or Neglect of the Incumbent to make such Insurance, the Ordinary shall have Power to sequester the Profits of the Living till such Payment or Insurance shall be made.

No. 23.
17 Geo III c.53.
Directions for Payment of the Principal and Interest o the Mortgage, &c.

'VII. And, in Order that the Payment of such Year may be equitably ascertained and adjusted, between the Successor, and the Parson, Vicar, or Incumbent, avoiding such Living or Benefice by Death or otherwise, or his Representatives, in Case of Death or other Avoidance, in such Proportions as the Profits of such Living shall have been received by them respectively, for the Year in which such Death or Avoidance shall happen;' be it further enacted, That in Case any Difference shall arise in adjusting or settling the Proportions aforesaid, the same shall be determined by two indifferent Persons, the one to be named by the said Successor, and the other by the Person making such Avoidance, or his Representatives, in Case of his Death; and in Case such Nominees shall not be appointed within the Space of two Calendar Months next after such Death or Avoidance, or if they cannot agree in adjusting such Proportions within the Space of one Calendar Month after they shall have been appointed, the same shall be determined by some neighbouring Clergyman, to be nominated by the Ordinary, whose Determination shall be final and conclusive between the Parties; which Nominations and Determinations shall be made according to the Forms for that Purpose contained in the said Schedule, as near as conveniently may be.

Proportioning the annual Payment, in Case of Avoidance.

VIII. And be it further enacted, That where there shall be no House of Habitation upon any Ecclesiastical Living or Benefice, so described as aforesaid, exceeding in clear yearly Value one hundred Pounds *per Annum*, or being one, the same shall be so mean, or in such a State of Decay as aforesaid, and the Incumbent shall not

The Ordinary of any Living worth 100l per Annum, which has no proper Habitation, may proceed in Execution of the Act, &c.

No. 23.
17 Geo. III c. 53

reside in the Parish twenty Weeks within any Year, computing the same from the first Day of *January*, it shall be lawful for the Ordinary of such Living or Benefice, with the Consent of the Patron (in Case the Incumbent shall not think fit to lay out one Year's Income, where the same may be sufficient, to put the House and Buildings in proper and sufficient Repair, or to make such Application as aforesaid, for building, repairing, or rebuilding such Parsonage House,) to procure such Plan, Estimate, and Certificate, as herein directed, and at any Time, within the Course of the succeeding Year, to proceed in the Execution of the several Purposes of this Act, in such Manner as the Parson, Vicar, or Incumbent, is hereby authorised and directed to proceed, and to make and execute such Mortgage as aforesaid; which shall be binding upon the Incumbent and his Successors, and he and they shall be, and are hereby made liable to the Payment of the Interest, Principal, and Costs; and every such Incumbent, and his Representatives, shall be, and are hereby also made respectively liable to the Proportion of the Payments for the Year which shall be growing at the Time of the Death of such Inbumbent, or Avoidance of such Living, according to the Directions aforesaid; which said Interest, Principal, and Costs, and Proportion of Payments growing at the Time of the Death of such Incumbent or Avoidance, shall and may be recovered against such Incumbent, his Successors or Representatives, respectively, by Action of Debt, in any Court of Record.

Money received for Dilapidations, &c. shall be applied in Part of the Payments, &c.

IX. And be it further enacted, That all Sum and Sums of Money recovered or received, by Suit or Compositions, from the Representatives of any former Incumbent of such Living or Benefice, and not laid out in the Repairs of such Buildings, shall go and be applied in Part of the Payments under such Estimate as aforesaid; and that all Money thereafter to be recovered or received, in Case the same cannot be had before such Buildings are completed, and the Money paid for the same, shall be applied, as soon as received, in Payment of the Principal then due, as far as the same will extend; or in Case the said Mortgage Money shall have been discharged, all such Money arising from Dilapidations shall be paid into the Hands of the Nominee to be appointed as aforesaid, or of some other Person or Persons to be nominated by the Ordinary, Patron, and Incumbent, in Case such Nominee shall be dead, or shall decline to act therein, to be laid out and expended in making some additional Buildings or Improvements upon the Glebe of such Living or Benefice, to be approved by the Ordinary, Patron, and Incumbent; and in the mean Time, or in Case such Buildings shall not be necessary, then in Trust, to lay out the same in Government or other good Securities, and pay the Interest thereof to the Incumbent for the Time being.

Where new Buildings are necessary, Ordinary &c. may purchase any convenient House, &c.

X. Provided always, and be it further enacted, That where new Buildings are necessary to be provided or erected for the Habitation and Residence of the Rector, Vicar, or other Incumbent, pursuant to the Authority hereby given, it shall and may be lawful for the Ordinary, Patron, and Incumbent, of every such Living or Benefice, to contract, or to authorise, if they shall think fit, the Person so to be nominated by them as aforesaid, to contract, for the absolute Purchase of any House or Buildings, in a Situation convenient for the Habitation and Residence of the Rector or Vicar of such Living or Benefice, and not at a greater Distance than one Mile from the Church belonging to such Living, Benefice, or Chapelry; and also to contract for any Land adjoining or lying convenient to such House or Building, or the House or Building belonging to any Parochial Living or Benefice, having no Glebe lying near or convenient to the same, not exceeding two Acres, if the annual Value of such Living,

No. 23.

17 Geo. III. c. 53.

to be ascertained as aforesaid, shall be less than one hundred Pounds *per Annum*, nor two Acres for every one hundred Pounds *per Annum*, if of greater Value, and to cause the Purchase-money for such House or Buildings to be paid out of the Money to arise under the Powers and Authorities of this Act; in all which Cases the said Buildings and Lands shall be conveyed to the Patron of such Living or Benefice, and his Heirs, in Trust, for the sole Use and Benefit of the Rector, Vicar, or other Incumbent of such Living or Benefice for the Time being, and their Successors, and shall be annexed to such Church or Chapel, and be enjoyed and go in Succession with the same for ever; but no Contract so made by the Nominee shall be valid, until confirmed by the Ordinary, Patron, and Incumbent, by Writing under their Hands; and every such Purchase-deed shall be in the Form or to the Effect contained in the Schedule hereunto annexed, and shall be registered in such Manner, and in such Office, as the other Deeds are hereby directed to be registered.

[illegible] to [illegible] Sale, & [illegible] of [illegible]

XI. Provided also, and be it further enacted, That when any such Land lying near to the Parsonage House and Buildings, belonging to such Living or Benefice, or to be so purchased or exchanged as aforesaid, shall be thought fit to be taken and used as a Convenience for the same, the Purchase-money or Equivalent for such Land shall be raised and had by Sale or Exchange of some Part of the Glebe or Tythes of such Living or Benefice, which shall appear to the said Ordinary, Patron, and Incumbent, most convenient for that Purpose; and every such Sale or Exchange shall be by Deed, in the Form or to the Effect contained in the Schedule hereunto annexed, and registered as herein-before directed.

Governors of Q. Anne's Bounty impowered to lend, &c.

XII. And be it further enacted, That it shall and may be lawful for the Governors authorised or appointed to regulate and superintend the Bounty given by her late Majesty Queen ANNE, for the Augmentation of the Maintenance of the poor Clergy, to advance and lend any Sum or Sums of Money, not exceeding the Sum of one hundred Pounds, in Respect of each Living or Benefice, out of the Money which has arisen, or shall from Time to Time arise, from that Bounty, for promoting and assisting the several Purposes of this Act, with Respect to any such Livings or Benefices as shall not exceed the clear annual improved Value of fifty Pounds; and such Mortgage and Security shall be made for the Repayment of the principal Sums so to be advanced, as are herein-before mentioned, but no Interest shall be paid for the same; and in Cases where the annual Value of such Living or Benefice shall exceed the Sum of fifty Pounds, that it shall and may be lawful for the said Governors to advance and lend, for the Purposes of this Act, any Sum not exceeding two Years' Income of such Living or Benefice upon such Mortgage and Security as aforesaid, and subject to the several Regulations of this Act, and to receive Interest for the same, not exceeding four Pounds for one hundred Pounds by the Year.

Colleges [illegible] may [illegible] without Interest.

XIII. And be it further enacted, That it shall and may be lawful for any College or Hall, within the Universities of *Oxford* and *Cambridge*, or for any other Corporate Bodies possessed of the Patronage of Ecclesiastical Livings or Benefices, to advance and lend any Sum or Sums of Money, of which they have the Power of disposing, in order to aid and assist the several Purposes of this Act, for the building, rebuilding, repairing, or purchasing, of any Houses or Buildings for the Habitation and Convenience of the Clergy, upon Livings or Benefices under the Patronage of such College or Hall, upon the Mortgage and Security directed by this Act for the Repayment of the Principal, without taking any Interest for the same.

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Who is to act for any Patron who shall be a Minor, &c.

XIV And be it further enacted, That whenever the Patron of any Living or Benefice, to which the Provisions of this Act are proposed to be extended, shall happen to be a Minor, Idiot, Lunatick, or Feme-covert, it shall and may be lawful for the Guardian, Committee, or Husband of every such Patron, to transact the several Matters aforesaid for such Patron, who shall be bound thereby, in such Manner as if he or she had been of full Age, of sound Mind, or Feme-sole, and had done such Act, or given his or her Consent thereto.

Writings not liable to Stamp-duty.

XV. Provided also, and be it further enacted, That all Acts herein-before required to be done or consented to by the Ordinary and Patron, shall be done by the Ordinary alone, when such Ordinary shall happen to be the Patron of the Living; and that no Deed, Bond, Transfer, or other Writing, Instrument, or Proceeding, made, had, or done, under the Powers or Authority of this Act, shall be charged or chargeable with any Stamp-duty, or Fee of Office, except as herein mentioned; any Law or Statute to the contrary notwithstanding.

Proviso, where Ordinary a Body Corporate, &c.

XVI Provided always, and it is hereby further enacted, That in all Cases where any Act is required to be done by the Ordinary, in the Execution of any of the Purposes of this Act, and such Ordinary shall be a Body Corporate Aggregate, every such Act shall be done and signified under the Seal of such Body Corporate.

Consent of Rector, &c.

XVII. Provided always, and be it further enacted, That where the Incumbent of any Chapelry or perpetual Cure shall be nominated by the Rector or Vicar of the Parish wherein the same is situated, in every such Case the Consent of such Rector or Vicar, together with the Consent of the Patron of such Rectory, shall be necessary in all such Matters wherein the Consent of the Patron is required by the former Provisions of this Act.

Disputes touching Residence, &c.

XVIII. Provided always, and be it further enacted, That whenever any Controversy or Dispute shall arise, touching the Residence of the Incumbent, with Respect to any of the Matters contained in this Act, the same shall be adjusted and determined by the Ordinary of the Diocese.

Patron, &c. to make Allowance for applying the Money, &c.

XIX. Provided also, and be it further enacted, That it shall and may be lawful for the Patron, Ordinary, and Incumbent, of any such Living or Benefice as aforesaid, or any Two of them, of which the Ordinary to be one, by Writing under their Hands, to make such Allowance to the Person or Persons to be nominated by them, for the Purpose of paying and applying the Money so to be raised as aforesaid, as they shall think fit, not exceeding the Sum of Five Pounds for every One Hundred Pounds so to be laid out and expended as aforesaid.

In what Manner the Consent of the Crown shall be made known, &c.

XX. Provided also, and be it further enacted, That in all Cases where the Patronage of any Living or Benefice herein-before described shall be in the Crown, and such Living or Benefice shall be above the yearly Value of Twenty Pounds in the King's Books, the Consent of the Crown to the several Proceedings hereby authorised respecting such Living or Benefice, shall be signified by the Lord High Treasurer, or First Lord Commissioner of the Treasury for the Time being; but if such Living or Benefice shall not exceed the Value of Twenty Pounds in the King's Books, such Consent shall be signified by the Lord High Chancellor, Lord Keeper, or Commissioners of the Great Seal for the Time being; or if such Living or Benefice shall be within the Patronage of the Crown in Right of the Duchy of *Lancaster*, then such Consent shall be signified by the Chancellor of the Duchy for the Time being, by Writing under their respective Hands, in the Form or to the Effect for that Purpose contained in the Sche-

dule hereunto annexed; and that in all such Cases where such Deed is hereby required to be executed by the Patron as well as the Ordinary and Incumbent, such Deed shall be valid and effectual to all Intents and Purposes whatsoever, if executed by the Ordinary and Incumbent only, after such Consent shall have been obtained as aforesaid from the said Lord High Treasurer, First Commissioner of the Treasury, Lord Chancellor, Lord Keeper, Lords Commissioners of the Great Seal, or Chancellor of the Duchy of *Lancaster* respectively, as the Case shall be, provided such Consent shall be registered at the Register Office aforesaid. No. 23: 17 Geo. III. c. 53

XXI. And be it further enacted, That it shall and may be lawful for any Archbishop or Bishop of any Diocese, and also for any Ecclesiastical Corporation Sole or Aggregate, being Lord or Lords of any Manor within which there shall be any Waste or Common Lands, Parcel of the Demesnes of such Manor, lying convenient for the House and Buildings, and other the Purposes of this Act, to grant a Part or Parts of such Waste or Common Lands in Perpetuity for the several Purposes of this Act, leaving sufficient Common for the several Persons having Right of Common upon such Wastes or Commons, and obtaining the Consent of the Lessee of such Lands, if the same shall be in Lease. Lords of Manors may grant a Part in Perpetuity, &c

SCHEDULE to which the Bill refers.

FORM *of the* CONSENT *of the Ordinary and Patron (to be written on Parchment).*

'A. B. Rector, Vicar, &c. *(as the Case shall be)* of the Parish, 'Chapelry, *or* perpetual Curacy *(as the Case shall be)*, of ' in the County of under 'the Jurisdiction of the Ordinary, having produced to us the said 'Ordinary, and Patron of the said Church and 'Living, a Certificate under the Hand of 'a skilful and experienced Workman, or Surveyor, of the State and 'Condition of the Buildings upon the Glebe belonging to the said 'Church, Chapelry, *or* perpetual Curacy *(as the Case shall be)*, 'and of the Value of the Timber, and other Materials thereupon, 'fit to be sold, or employed about such Buildings; and also a 'Plan, made by the said of the Work 'proposed to be done by new Buildings and Repairs upon the said 'Glebe, and an Estimate of the Expence attending the same, after 'applying the said Materials, or the Money to arise from the Sale 'thereof, in such Buildings and Repairs; and also a particular Ac'count in Writing, signed by the said *A. B.* of the annual Profits of 'such Living, and of the Rents, Stipends, Taxes, and other Outgoings, 'annually issuing thereout, verified upon Oath, pursuant to the Direc'tions of an Act, passed in the Seventeenth Year of the Reign of his 'Majesty King GEORGE the Third, *to promote the Residence of the 'Parochial Clergy, by making Provision for the more speedy and 'effectual building, rebuilding, repairing, or purchasing Houses, and 'other necessary Buildings and Tenements, for the Use of their Bene'fices*; and having considered such Certificate, Plan, and Account: 'Now, we do approve thereof; and do consent, that such Buildings 'and Repairs shall be made as therein specified, and that the said '*A. B.* do borrow and take up at Interest the Sum of ' being the Estimate of the Expences, after deducting 'the Value of the Timber, and other Materials, thought proper to be 'sold, and which appears to us, from the said Account, a Sum not

No. 23. 17 Geo. III. c. 53. 'exceeding Two Years net Income and Produce of the said Living: 'which Money is to be paid to (a Person 'nominated by us and the said *A. B.*), and applied according to the 'Direction of the said Act.'

FORM *of the* MORTGAGE.

'THIS Indenture, made the Day of in the Year of the Reign 'of his Majesty and in the Year of our Lord ' between the Reverend 'Rector *or* Vicar, *&c.* of the Parish Church, Curacy, *or* Chapelry, 'of in the County of and 'the Diocese of the Bishop of of the one 'Part; and of of the 'other Part. Whereas the said pursuant 'to the Directions of an Act, passed in the Seventeenth Year of the 'Reign of his Majesty King GEORGE the Third, intituled, *An Act 'to promote the Residence of the Parochial Clergy, by making Pro-'vision for the more speedy and effectual building, rebuilding, re-'pairing, or purchasing, Houses, and other necessary Buildings and 'Tenements for the Use of their Benefices,* hath obtained the Consent 'of the Ordinary of the said Diocese, and the Patron of the said 'Church and Living, to borrow and take up at Interest the Sum of ' to be laid out and expended in building, 'rebuilding, *or* repairing *(as the Case shall be)* the Parsonage House, 'and other necessary Offices, upon the Glebe belonging to the said 'Church, Chapel, *or* Curacy, as appears by an Instrument, signed by 'the said Ordinary and Patron, hereunto annexed: And whereas the 'said hath agreed to lend and advance the 'Sum of upon a Mortgage of the Glebe, 'Tythes, Rents, and other Profits and Emoluments of the said Living, 'pursuant to the Direction and the true Intent and Meaning of the 'said Act; Now this Indenture witnesseth, That the said ' in consideration of the Sum of Five Shillings to 'him in Hand paid, and of the Sum of 'paid at or before the Sealing and Delivery hereof, into the Hands 'of (a Person *or* Persons *(as the Case 'shall be)* nominated by the said Ordinary, Patron, and Incumbent, 'to receive the same, pursuant to the Direction of the said Act, '(which Nomination is also hereunto annexed) and which Receipt of 'the said Sum of the said ' have *or* hath acknowledged, by an Indorsement on the 'Back of this Deed), hath granted, bargained, sold, and demised, and 'by these Presents doth grant, bargain, sell, and demise, unto the 'said his Executors, Administrators, and 'Assigns, all the Glebe Lands, Tythes, Rents, Moduses, Composi-'tions for Tythes, Salaries, Stipends, Fees, Gratuities, and other 'Emoluments and Profits whatsoever, arising, coming, growing, re-'newing, or payable to the Rector, Vicar, *or* Incumbent *(as the Case 'shall be)* of the said Living in respect thereof, with all and every 'their Rights, Privileges, and Appurtenances thereunto belonging, to 'have, hold, receive, take, and enjoy the said Premises, with their and 'every of their Appurtenances, unto the said 'his Executors, Administrators, and Assigns, from henceforth, for 'and during the Term of Years, fully to be com-'pleat and ended, in as full, ample, and beneficial Manner, and with 'such Remedies and Powers for obtaining and recovering the same,

'and every Part thereof, to all Intents and Purposes, as the said No. 23.
' his Successors, Rectors, Vicars, &c. 17 Geo. III. c. 53.
'*(as the Case shall be)* of the said Church, could or might, or ought
'to have held, enjoyed, received, taken, or recovered the same, if these
'Presents had not been made:

'*In Cases where the Mortgage by this Act directed is to be made by the Ordinary and Patron alone, without the Incumbent, this Covenant and Proviso are to be omitted, and the Form is to be varied in such other Respects as shall be necessary.*

[And the said *A. B.* for himself, his Heirs, Executors, and Administrators, doth hereby covenant, promise, and agree, to and with the said his Executors, Administrators, and Assigns, That he the said *A. B.* during the Time he shall continue Rector, Vicar, &c. of the said Parish and Parish Church, shall
'and will well and truly pay, or cause to be paid unto the said
' his Executors, Administrators, or Assigns,
'Intererst for the said Sum of or so
'much thereof as shall remain due at the End of every Year, to be
'computed from the Day of the Date of these Presents, after the Rate
'of *per Centum per Annum,* by yearly Payments,
'the first of the said Payments to begin and be made on the
' Day of next; and also, at
'the several Times before mentioned for Payment of the Interest, as
'aforesaid, shall and will well and truly pay, or cause to be paid, the
'Sum of Five Pounds *per Centum per Annum* of the Principal which
'remained due at the Beginning of the Year in which every such Pay-
'ment is to be paid, in case the said *A. B.* shall be resident upon the
'said Living for the Time mentioned in, and according to the true
'Intent and Meaning of the said Act; and in case the said *A. B.* shall
'not reside upon the said Living during the Time mentioned in, and
'according to the true Intent and Meaning of the said Act, he shall
'pay, or cause to be paid, the Sum of Ten Pounds *per Centum per*
'*Annum* of the said Principal Money, by such yearly Payments as
'aforesaid, instead of the said Sum of Five Pounds *per Centum per*
'*Annum,* and shall and will continue such respective Payments of
'the said Interest, and on Account of the said Principal Money, so
'long as he shall continue Rector, Vicar, &c. *(as the Case shall be)*
'of the said Parish and Parish Church, unless all the said Principal
'Money, and Interest for the same, shall be sooner paid and dis-
'charged. Provided always, and these Presents are upon this Condi-
'tion, That if the said *A. B.* and his Successors, shall well and truly
'pay, or cause to be paid, the said Principal Money, and Interest for
'the same, in Manner and at the Times aforesaid, according to the
'true Intent and Meaning of the said Act, and of these Presents, and
'also all Costs and Charges which shall have been occasioned by the
'Nonpayment thereof, these Presents, and every Thing herein con-
'tained, shall cease and be void. Provided also, That it shall and
'may be lawful for the said *A. B.* and his Successors, peaceably and
'quietly to hold, occupy, possess, and enjoy, all and singular the
'said Glebe Lands, Tythes, Rents, Moduses, Composition for Tythes,
'Stipends, Fees, Gratuities, and other Emoluments and Profits what-
'soever, arising, or to arise, from or in respect of the said Living,
'until Default shall be made by him or them respectively in the
'Payment of the Interest and Principal, or some Part thereof, at the
'Times and in the Manner aforesaid. In Witness, &c.

No. 23.
17 Geo III. c. 53

NOMINATION *of a Clergyman by the Bishop, to settle any Dispute about the Proportion of the Payments within the Year in which any Avoidance shall happen.*

'I The Right Reverend Bishop of 'pursuant to the Authority of an Act, passed in the seventeenth 'Year of the Reign of his Majesty King George the Third, inti- 'tuled, *An Act to promote the Residence of the Parochial Clergy, by 'making Provision for the more speedy and effectual building, re- 'building, repairing, or purchasing Houses, and other necessary 'Buildings and Tenements, for the Use of their Benefices,* do hereby 'nominate the Reverend being a Clergyman 'within my said Diocese, to adjust and determine the Matter in Dis- 'pute between the Reverend Clerk, the 'present Incumbent of the Rectory, Vicarage, &c. of ' within my Diocese, and the 'Representatives of the the last Incumbent, '*(in case of his Death)* or the said *(in case 'of his Resignation or Promotion)* concerning the due Proportion to 'be paid by each of the said Parties of the Principal and Interest 'which accrued due within the Year in which such Death or 'other Avoidance happened, according to the Direction, true Intent 'and Meaning of the said Act. Given under my Hand, this ' Day of

AWARD *and* DETERMINATION *of the Clergyman nominated by the Bishop.*

'I The Reverend *A. B.* of in the County 'of and Diocese of the Bishop of Clerk, having been nominated by the said Bishop, pursuant to the 'Power given by an Act, passed in the seventeenth Year of the Reign 'of his Majesty King George the Third, intituled, *An Act to pro- 'mote the Residence of the Parochial Clergy, by making Provision 'for the more speedy and effectual building, rebuilding, repairing, or 'purchasing Houses, and other necessary Buildings and Tenements, 'for the Use of their Benefices,* to adjust and determine the Matter in 'Dispute between the Reverend Clerk, the 'present Incumbent of the Rectory, Vicarage, &c. of ' within the said Diocese and 'the Representatives of the last Incumbent *(in case of his Death)*, 'or the said *(in case of his Resignation or 'Promotion)* concerning the due Promotion to be paid by each of the 'said Parties, of the Principal and Interest which accrued due within 'the Year in which such Death or Avoidance happened, according to 'the Direction and true Intent and Meaning of the said Act; and 'having heard and duly considered the said Matters so referred to me 'as aforesaid, do award, adjudge, and determine, That the said ' shall pay, in respect of the Interest and 'Principal which became due within the Year aforesaid, the Sum of ' and that the said 'shall pay, in respect of the same, the Sum of 'being the Remainder thereof, according to the Provision and Direc- 'tion of the said Act. Given under my Hand, this 'Day of

No. 23.
17 Geo III. c. 53.

APPOINTMENT *of the* NOMINEE *(to be wrote on Parchment.)*

'WE whose Names are subscribed, being the Ordinary, Patron, 'and Incumbent, of the Rectory, Vicarage, &c. of ' within the County of and Diocese 'of the Bishop of do hereby nominate and ap- 'point of to 'receive the Money authorised to be raised by an Act, passed in the 'seventeenth Year of the Reign of his Majesty King GEORGE the 'Third, intituled, *An Act to promote the Residence of the Parochial 'Clergy, by making Provision for the more speedy and effectual 'building, rebuilding, repairing, or purchasing Houses, and other 'necessary Buildings and Tenements, for the Use of their Benefices,* 'for the Purpose of building, rebuilding, repairing, *or* purchasing the 'Parsonage House, &c *(as the Case shall be)* to the said Rectory, 'Vicarage, &c. belonging, and to pay and apply the same, and to enter 'into Contracts with proper Persons for such Buildings or Repairs, 'and to inspect and take care of the Execution of such Contracts, and 'to take such Receipts and Vouchers, keep such Accounts, and do 'and perform all such other Matters and Things, which Nominees 'are authorised and required to do and perform in and by the said Act, 'the said having given Security for the due 'Application thereof, according to the Direction of the said Act. 'Given under our Hands, this Day of

FORM *of* ORDER *of the Ordinary, Patron, and Incumbent, for laying out or applying the Surplus Money.*

'WE whose Names are subscribed, being the Ordinary, Patron, 'and Incumbent, of the Rectory, Vicarage, &c. of ' in the County of and 'Diocese of the Bishop of do hereby order, That 'the Sum of now remaining in the Hands of ' the Person nominated and appointed to 'receive and apply the Money raised for building, repairing, &c. the 'Parsonage House, &c. belonging to the said Rectory, Vicarage, &c. 'under the Act of Parliament, passed in the seventeenth Year of the 'Reign of his Majesty King GEORGE the Third, intituled, *An Act to 'promote the Residence of the Parochial Clergy, by making Provision 'for the more speedy and effectual building, rebuilding, repairing, or 'purchasing Houses, and other necessary Buildings and Tenements, 'for the Use of their Benefices;* shall be [paid to 'being the Person intitled to receive the Money now remaining due 'on the Mortgage made of the Glebe Lands, Tythes, and other Profits 'and Emoluments of the said Living, and applied in Part of Pay- 'ment thereof, pursuant to the Direction of the said Act] *or* [applied 'in building or repairing, &c. *(describing the same)* upon the Glebe 'belonging to the said Living.] Given under our Hands, this ' Day of

No 23.
17 Geo. III c. 53.

FORM of CERTIFICATE from the two Clergymen.

'WE, the Reverend *A. B.* of in the County of Clerk, and *C. D.* of 'Clerk, being two Clergymen within the Diocese of the Bishop of do hereby certify to the said Bishop, pursuant 'to the Directions and Instructions sent by him to us, That we have 'made Enquiry into the State and Condition of the Buildings upon 'the Glebe belonging to the Rectory, Vicarage, &c. of 'within the said Diocese, at the Time the Revered 'Clerk, the present Incumbent thereof, entered upon the said Living, 'which was in or about the Year of our Lord and do find [That the same have been kept in due 'and common Repair, without any wilful Neglect *(if the Case is so)*] '*or* [That the same have, by wilful Negligence, been suffered to go 'to Decay, and that they have sustained Damage, from a Want of 'common and ordinary Repair, to the Amount of 'Pounds] and we have also enquired into the Money received by the 'said for Dilapidations, from the Representa-'tives of the former Incumbent, and do find, That he hath received 'the Sum of for such Dilapidations; and '[that he hath expended the Whole, *or* thereof '*(as the Case may be)* in the necessary Repairs of the Buildings] *or* '[that the same hath not been laid out or expended in repairing the 'Buildings] upon the Glebe belonging to the said Living. Given 'under our Hands, this Day of

FORM *of the* DEED *of Sale, or Exchange, of Lands or Tythes belonging to the Living or Benefice.*

'THIS Indenture, made the Day of in the Year of the Reign of his Majesty King 'GEORGE the and in the Year of our Lord between *A. B.* Ordinary of the Rectory (Vicarage, 'Chapelry, *or* Perpetual Cure, *as the Case shall be)* of 'in the County of *C. D.* of 'Patron of the said Rectory, &c. and the Reverend *E. F.* Clerk, In-'cumbent of the said Rectory, &c. of the one Part, and *G. H.* of of the other Part. Whereas, in the Exe-'cution of an Act, passed in the seventeenth Year of the Reign of 'his Majesty King GEORGE the Third, intituled, *An Act*, &c. *(here 'set forth the Title of the Act)* it hath been found convenient to pur-'chase *(or* exchange, *as the Case shall be)* certain Lands, &c. '*(describe particularly the Lands purchased)* lying near and conveni-'ent to the Parsonage House belonging to the said Rectory, &c. *(or, 'if the House be lately purchased)* [lying near a certain Messuage, 'House, or Tenement, and Buildings, lately purchased for the Habi-'tation of the Minister of the said Rectory, &c. under the Powers of 'the said Act] and it hath been found most convenient, and agreed 'by the said Ordinary, Patron, and Incumbent, that the Glebe Lands '*(or* Tythes, *as the Case shall be)* herein after described, belonging 'to the said Rectory, &c. shall be sold, to raise the Sum of being the Purchase-money for the said 'Lands herein before described *(or* exchanged, *if the same is to be 'done by Exchange,)* in order to make an Equivalent for such Lands) 'and a Contract hath been made with the said *G. H.* for the absolute

'Sale, at the Price or Sum of (or No. 23.
'Exchange, *as the Case shall be)* of Part of the Glebe Land *(or* of 17 Geo. III c. 53.
'the Tythes, *as the Case shall be)* belonging to the said Rectory, &c.
'herein after mentioned; that is to say, (*here describe the Particulars*
'*of the Land or Tythes proposed to be sold or exchanged*) which Con-
'tract is hereby ratified and confirmed by the said Ordinary, Patron,
'and Incumbent: Now this Indenture witnesseth, That the said
'*A. B. C. D.* and *E. F.* in order to carry the said Contract into
'Execution, and to fulfil the Purposes of the said recited Act, in pur-
'suance of the Powers thereby to them given, and in consideration of
'the Sum of the Receipt whereof is ac-
'knowledged on the Back of this Deed; which Sum hath been paid
'and applied in the Purchase of the Lands herein before described;
'have, and each of them hath granted, bargained, and sold (and ex-
'changed, *if the same be by Exchange*), and by these Presents do,
'and each of them doth grant, bargain, sell (and exchange, *if by*
'*Exchange*) unto the said *G. H.* and his Heirs and Assigns, all, &c.
'(*here describe the Lands or Tythes as the Case shall be*) with their
'and every of their Rights, Privileges, and Appurtenances, to hold to
'and to the Use of the said *G. H.* his Heirs and Assigns for ever.
'*If done by Exchange, add the following Words*), [in Exchange for
'certain Lands which belonged to the said *G. H.* and are, by Inden-
'tures of equal Date herewith, exchanged and conveyed to the said
'C. *D.* in Trust, for the sole Use and Benefit of the said *E. F.* and
'his Successors, Rectors, Vicars, &c. (*as the Case shall be*) of the
'said Living or Benefice, for the Time being, for ever] And the
'said *A. B.* C. *D.* and *E. F.* do hereby severally covenant for them-
'selves, their several Executors and Administrators, to and with the
'said *G. H.* his Heirs and Assigns, That they, nor any of them
'have or hath done any Act whereby the said Lands (*or* Tythes, *as*
'*the Case shall be*) can or may be incumbered; and that the said
'*G. H.* his Heirs and Assigns, shall and may, from Time to Time,
'for ever hereafter, peaceably and quietly hold and enjoy the said
'Glebe Lands *or* Tythes (*as the Case shall be*) according to the true
'Intent and Meaning of the said Act, without any Lett, Hindrance,
'or Interruption, of or from them, or any of them.
'In Witness, &c.

FORM *of the* DEED *of Purchase or Exchange of Buildings or Lands to be annexed to the Living or Benefice.*

'THIS Indenture, made the Day of
'in the Year of the Reign of his Majesty King
' and in the Year of our Lord between
'*A. B.* of of the one Part; *C. D.* Ordinary of
'the Rectory, Vicarage, Chapelry, *or* Perpetual Cure *(as the Case*
'*shall be)* of in the County of
'*E. F.* of Patron of the said Rectory, &c. and
'the Reverend *G. H.* Clerk, Incumbent of the said Rectory, &c. of
'the other Part. Whereas there is no Parsonage House belonging to
'the said Rectory, &c. *(or)* [the Parsonage House belonging to the
'said Rectory, &c. is become so ruinous and decayed *(or* so mean)
'that it is not fit for the Habitation of the Minister of the said
'Rectory, &c.] and one Years net Income or Produce of the said
'Living or Benefice will not be sufficient to rebuild or repair the said
'House, with the necessary Offices belonging thereto: And whereas
'a certain Messuage, House, or the Tenement, with the Buildings

No. 23.
17 Geo. III. c. 53.

'thereunto belonging, situate in the Property of 'the said *A. B.* and lying within the Distance of Yards 'from the Church (*or* Chapel, *as the Case shall be*) of the said 'Rectory, &c. appears to the said Ordinary, Patron, and Incumbent, 'proper and convenient for the Habitation and Use of the Minister of 'the said Rectory, &c. [and more commodious than the present 'House and Buildings upon the Glebe of the said Rectory, &c.] '(*in Cases where there are any*); and a Contract hath been made, 'by the Direction and with the Approbation and Consent of the said 'Ordinary, Patron, and Incumbent, with the said *A. B.* which is 'hereby ratified and confirmed by the said Ordinary, Patron, and 'Incumbent, for the absolute Purchase of the said Messuage, House, 'or Tenement, and Buildings, for the Price or Sum of 'pursuant to the Directions of an Act, passed in the seventeenth 'Year of the Reign of his Majesty King George the Third, intituled, '*An Act*, &c. (*set forth the Title of the Act*:)

This to be inserted when the Lands are purchased from the same Person who sells the House and Buildings.

[And whereas a Contract has likewise been made with the said *A. B.* by the like Direction, Approbation, and Consent, which is hereby likewise ratified and confirmed by the said Ordinary, Patron, and Incumbent, for the absolute Purchase of the Inheritance of a certain Yard, Garden, Orchard, and Piece or Parcel of Land (*describing them particularly, as the Case shall be*) lying near or convenient to the said Messuge, House, Tenement, and Buildings, containing, by Admeasurement, for the Price or Sum of which have been agreed by the said Ordinary, Patron, and Incumbent, to be raised by the Sale (*or* Exchange) of certain Lands, *or* Tythes, (*as the Case shall be*) belonging to the said Rectory, &c. herein after described, pursuant to the Powers given by the said Act; *viz.* (*here give a full Description of the Lands so agreed to be sold*); (*if the Equivalent is to be by Exchange, then after the Word* Incumbent, *last mentioned, insert* [and the said *A. B.* to be exchanged for [certain Lands *or* Tythes, &c. (*as above.*)] Now this Indenture wit-'nesseth, That the said *A. B.* for and in Consideration of the said 'several Sums of and 'to him in Hand paid for the Purchases aforesaid (*if both the Build-'ings and Lands are purchased for Money*); (*but if the Equivalent 'for the Land is to be by Exchange, then*) in Consideration of the 'Land (*or* Tythes *as the Case shall be*) so agreed to be exchanged as 'aforesaid, and intended to be conveyed to him the said *A. B.* by the 'said Ordinary, Patron, and Incumbent, by Indenture of equal Date 'herewith] the Receipt of which said Sum (*or* Sums of Money, *as 'the Case shall be*) [and Acknowledgment of the said Exchange] '(*if the Equivalent for the Land is to be by Exchange*) the said *A. B.* 'hath admitted, by an Indorsement on the Back of this Deed, hath 'granted, bargained, and sold, and by these Presents doth grant, 'bargain, and sell (*if by Exchange*) [hath granted, bargained, sold, 'and exchanged, with, and] unto the said *E. F.* and his Heirs, all, '&c. (*here insert a full Description of the Buildings or Lands so 'intended to be conveyed, with their and every of their Rights, 'Privileges, and Appurtenances*) to hold to the said *E. F.* and his 'Heirs, in Trust, for the sole Use and Benefit of the said *G. H.* and 'his Successors, Rectors, Vicars, &c. (*as the Case shall be*) of the 'said Living or Benefice for the Time being, for ever: And the said '*A. B.* for himself, his Heirs, Executors, and Administrators, doth 'covenant and agree to and with the said *E. F.* and his Heirs, That

'he hath good Right to convey the said Messuage, House, or Tenement, and Buildings, Lands, &c. (*as the Case shall be*) and that he will warrant the same, for the Uses and Purposes aforesaid, for ever, free from all Claims, Charges, and Incumbrances whatsoever, by, from, or under him, or any of his Ancestors. In witness, &c. No. 28. 17 Geo. III. c. 53.

FORM of CERTIFICATE of RESIDENCE.

'WE, A. B. Rector, Vicar, *or* officiating Minister (*as the Case shall be*) of the Parish of in the Diocese of , Clerk, and C. D. Rector, Vicar, *or* officiating Minister (*as the Case shall be*) of the Parish of within the said Diocese, Clerk, which said Parishes of and are near adjoining to the Parish of within the said Diocese, do hereby certify, That E. F. Rector, Vicar, *or* Incumbent (*as the Case shall be*) of the said Parish and Parish Church of aforesaid, hath resided upon his Living or Benefice, within that Parish, for the Space of twenty Weeks, between the Day of and the Day of last. Given under our Hands, this Day of

FORM *of* CONSENT *where the Living or Benefice shall be in the Patronage of the Crown, or within the Duchy of* Lancaster.

'WHEREAS the Living or Benefice of within the Diocese of is in the Patronage of | the Crown, and rated above *or* under (*as the Case shall be*) twenty Pounds *per Annum* in the King's Books, | *or* of the Chancellor of the Duchy of *Lancaster* (*as the Case shall be*); and Application hath been made for building (rebuilding, repairing, or purchasing, *or* exchanging, *as the Case shall be*) the Parsonage House *or other* Buildings *or* Land (*as the Case shall be*) for the Use of the said Living or Benefice, in pursuance of the Powers given for that Purpose, by an Act passed in the seventeenth Year of the Reign of his Majesty King GEORGE the Third, intituled, *An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses, and other necessary Buildings and Tenements, for the Use of their Benefices*; now I the Right Honourable First Lord Commissioner of the Treasury, | Lord High Chancellor of *Great Britain*, | *or* Chancellor of the Duchy of *Lancaster* (*as the Case shall be*) being satisfied that such building, rebuilding, repairing, purchasing, *or* exchanging, &c. (*as the Case shall be*) will be an Improvement and Advantage to the said Living or Benefice, do hereby consent, That such Buildings, Repairs, Purchases, *or* Exchanges (*as the Case shall be*) shall be made, according to the Directions and the true Intent and Meaning of the said Act. Given under my Hand, this Day of

No. 24.

21 George III. c. 66.—An Act to explain and amend an Act, made in the seventeenth Year of the Reign of his present Majesty, intituled, *An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses, and other necessary Buildings and Tenements, for the Use of their Benefices.*

21 Geo. III c. 66. 17 Geo. III c. 53. 'WHEREAS by an Act, passed in the seventeenth Year of the Reign of his present Majesty, intituled, *An Act to promote the Residence of the Parochial Clergy, by making Provision for the more speedy and effectual building, rebuilding, repairing, or purchasing Houses, and other necessary Buildings and Tenements, for the Use of their Benefices*; it is enacted, amongst other Things, 'That the Incumbent of every Living or Benefice, of which the 'Glebe, Tithes, Rents, and Profits, shall be mortgaged for the 'Purposes of the said Act, shall pay the Interest arising upon every 'such Mortgage, yearly, as the same shall become due; and also 'five Pounds *per Centum per Annum*, if such Incumbent was resident, 'and ten Pounds *per Centum per Annum*, if non-resident, of the 'Principal remaining due, by yearly Payments; which Words, if 'literally understood and observed, would, contrary to the true Intent 'and Meaning of the said Act, render the Discharge of the principal 'Sum impracticable, and thereby discourage Persons from lending 'Money upon such Securities;' be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the Incumbent of every Living or Benefice of which the Glebes, Tithes, Rents, and Profits, have been or shall be mortgaged for the Purposes of the said Act, shall, from and after the passing of this Act, well and truly pay, or cause to be paid, to every such Mortgagee, over and besides the Interest of the Principal Money due upon such Mortgage, the Sum of five Pounds *per Centum per Annum*, if resident, or ten Pounds *per Centum per Annum*, if non-resident, of the Money originally advanced upon such Mortgage, until the whole of the said Principal Money shall be discharged; and if, upon any such Mortgage or Mortgages already made, less shall have been paid by the present Incumbent than what is hereby required, within six Months after the passing of this Act, to make up the Deficiency; and in Default of Payment thereof within the Time aforesaid, the same shall be recovered in such and the same Manner as the Interest is recoverable by Virtue of the Provisions in the said recited Act.

Incumbent, where Glebes, etc. be mortgaged, shall pay to the Mortgagee, etc.

II. And be it further enacted, That the Forms contained in the said Schedule respecting the Allowance of Accounts, and the Bond and Receipt to be given by the Nominee, as directed by the said recited Act, or Forms to the like Effect, shall be observed and complied with in the Execution of this and the said recited Act

Forms in the ...ule to be ob...

III. And be it further enacted, That this Act, and every Thing herein contained, shall be deemed, adjudged, and taken to be a Publick Act; and shall be judicially taken Notice of as such by all Judges, Justices, and other Persons whomsoever, without specially pleading the same.

STATE of Account of the Money advanced and paid by A. B. (Rector *or* Vicar, *etcetera, as the Case shall be*) of the Living of in the County of for the building (rebuilding *or* repairing) the Parsonage House and Buildings belonging to the said Living, according to the Direction of a Statute made in the seventeenth Year of the Reign of his Majesty King GEORGE the Third. No. 24. 21 Geo. III. c. 66.

C. D. Ordinary.
E. F. Patron.
G. H. Incumbent.

FORM *of Allowance of the Nominee's Account of the Money received and expended by him pursuant to the Directions of the said Statute of the seventeenth of* GEORGE *the Third, to be written at the Foot of such Account.*

'WE have examined, and do hereby approve and allow the above 'Account. Given under our Hands, this 'Day of

'A. B. Ordinary.
'C. D. Patron.
'E. F. Incumbent.'

RECEIPT *to be signed by the Nominee for the Money which shall be borrowed and paid into his Hands, pursuant to the Directions of the said Act.*

'I A. B. being the Person nominated by the Ordinary, Patron, and 'Incumbent, of the Rectory (Vicarage, *etcetera, as the Case* '*shall be*) of in the County of 'and Diocese of the Bishop of to receive and apply 'the Money authorised to be borrowed by Mortgage of the Glebe, 'Tithes, Rents, and other Profits and Emoluments of the said ' for the Purpose of building (rebuilding, *or* 'repairing, *as the Case shall be*) the Parsonage House (*or* Outbuild'ings, *etcetera, as the Case shall be*) belonging to such Living or 'Benefice, do hereby acknowledge to have received from the Hands 'of C. D. being the Person to whom such Mortgage is intended to 'be made, the Sum of being the Sum for which 'such Mortgage or Security is to be made: And I do promise to 'apply the same in such Manner and for such Purposes as are directed 'by the said Act.'

FORM *of* BOND *to be given by the Nominee and his Surety, pursuant to the Directions of the said Act.*

'OBLIGATION of the Bond (*in the common Form of Obliga*'*tions*) from A. B. (*describing him as in the last Form of* '*Receipt*) and C. D. of *etcetera* (*describing the Surety*) to '(*describing the Ordinary*) in the penal Sum of '(*to be double the Sum for which the Security is to be given,* '*etcetera, etcetera.*)'

FORM *of the* CONDITION *of the said* BOND.

'THE Condition of the above Obligation is such, That if the 'said A. B. (*naming the Nominee as before mentioned*) shall and 'do justly and truly pay and account for the Sum of

No. 24. 'received from him this Day from C. D. the being Person to whom
21 Geo. III. c. 66. 'a Mortgage hath been this Day made and executed of the Glebe, 'Tithes, Rents, and other Profits and Emoluments, of the Rectory, '(Vicarage, *etcetera, as the Case shall be*) of 'for 'the Purpose of building (rebuilding *or* repairing) of the said Rectory, '*etcetera, as the Case shall be*), according to the true Intent and 'Meaning of two several Acts of Parliament, passed in the seven-'teenth and twenty-first Years of the Reign of his Majesty King 'George the Third, for those Purposes; then this Obligation to be 'void, or otherwise to remain in Force.

'A. B.
'C. D.'

No. 25.

24 George III. c. 35.—An Act to impower the Bishop of *London* for the Time being, or any other Bishop to be by him appointed, to admit to the Order of Deacon or Priest, Persons being Subjects or Citizens of Countries out of his Majesty's Dominions, without requiring them to take the Oath of Allegiance as appointed by Law.

No. 26.

26 Geo. III. c. 84.—An Act to impower the Archbishop of *Canterbury*, or the Archbishop of *York*, for the Time being, to consecrate to the Office of a Bishop, Persons being Subjects or Citizens of Countries out of his Majesty's Dominions.

No. 27.

36 Geo. III. c. 83.—An Act for the further Support and Maintenance of Curates within the Church of *England*, and for making certain Regulations respecting the Appointment of such Curates, and the Admission of Persons to Cures augmented by Queen Anne's Bounty, with Respect to the Avoidance of other Benefices.—[14*th May*, 1796.]

36 Geo. III. c. 83. 'WHEREAS, in and by a Statute passed in the twelfth Year of
12 Anne. stat. 2. c. 12. 'the Reign of Queen Anne, it is enacted, That if any Rector 'or Vicar, having Cure of Souls, should, after the twenty-ninth of '*September*, One Thousand Seven Hundred and Fourteen, nominate 'and present any Curate to the Bishop or Ordinary, to be licensed or 'admitted to serve the Cure of such Rector or Vicar in his Absence, 'the said Bishop or Ordinary, having Regard to the Greatness of the 'Cure, and the Value of the Ecclesiastical Benefices of such Rector 'or Vicar, should, on or before the granting such Licence, appoint, 'by Writing under his Hand and Seal, a sufficient certain Stipend or 'Allowance, not exceeding fifty Pounds *per Annum* nor less than

No. 27.
26 Geo. III. c. 85.

'twenty Pounds *per Annum*, to be paid or answered at such Times as 'he should think fit, by such Rector or Vicar to such Curate, for his 'Support and Maintenance; and if it should appear to the Bishop or 'Ordinary, upon Complaint or otherwise, that any Curate of such 'Rector or Vicar, licensed or admitted before the twenty-ninth of '*September* One Thousand Seven Hundred and Fourteen, had not 'a sufficient Maintenance, it should be lawful for the said Bishop or 'Ordinary to appoint him a certain Stipend or Allowance in like 'Manner as before mentioned; and in case any Difference shall arise 'between any Rector or Vicar and his Curate, touching such Stipend 'or Allowance, or the Payment thereof, the Bishop or Ordinary, on 'Complaint to him made, should summarily hear and determine the 'same; and in case of Neglect or Refusal to pay such Stipend or Al'lowance, might sequester the Profits of such Benefice for and until 'Payment thereof: And whereas in many Places the Provision made, 'in and by the said Statute, for the Support and Maintenance of 'such Curate, is now become insufficient;' be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this Parliament assembled, and by the Authority of the same, That it shall and may be lawful for the Bishop or Ordinary to appoint, under his Hand and Seal, any Stipend or Allowance for any Curate heretofore nominated or employed, or hereafter to be nominated or employed, not exceeding seventy-five Pounds *per Annum*, over and besides, on Livings where the Rector or Vicar does not personally reside four Months in the Year at least, the Use of the Rectory or Vicarage House, and the Garden and Stable thereunto belonging, such Use to be granted to the said Curate for the Space of twelve Calendar Months, by the Authority of the Bishop or Ordinary, under his Hand and Seal, with Power in the said Bishop or Ordinary to renew the Grant from Time to Time, or a further Sum not exceeding fifteen Pounds *per Annum*, in lieu of such House, Garden, and Stable, in case there shall be none such, or it shall appear to the Bishop or Ordinary not to be convenient to allot and assign the same to such Curate; which said Stipend or Stipends shall be paid and recovered in such and the same Manner as the Stipend payable under and by virtue of the said recited Act: Provided always, That the said House, Garden, and Stable shall be for the Use of the said Curate and his Family only during his actual Residence in the said Rectory and Vicarage House.

Bishop or Ordinary may appoint a Stipend to Curates, of 75l. per Annum with the Use of the Parsonage House in a certain Case, or an Allowance for it.

II. Provided also, and be it further enacted, That the Bishop or Ordinary shall have Power, at any Time, under his Hand and Seal, to revoke the Grant to the said Curate of the said House, Garden, and Stable, or any of them; and also to insert in such Grant such Terms and Conditions to be observed on the Part of the Curate as he shall think reasonable; and also that the Curate shall peaceably deliver up the Possession of the Premises granted to him at the Expiration or other sooner Determination of the Grant thereof; and in case he shall refuse so to do, he shall forfeit and lose to the Rector or Vicar all such Parts of his Stipend as shall then be unpaid, or shall thereafter become due, and also the Sum of fifty Pounds to such Rector or Vicar, and which shall be recoverable in an Action of Debt.

The Grant of the House may be revoked.

Penalty on not delivering it up.

III. 'And whereas by an Act, passed in the first Year of his 'late most gracious Majesty King GEORGE the First, it was enacted, 'That all Churches, Curacies, and Chapels, which should be aug'mented by the Governors of the late Queen ANNE's Bounty, should 'be from thenceforth perpetual Cures and Benefices: And whereas 'it is expedient that such augmented Churches, Curacies, and Chapels

1 Geo. I. stat. 2. c. 10.

No. 27.
36 Geo III. c. 83.

'should be subjected to the same Rules as Benefices, with respect to 'the Avoidance of other Benefices;' be it further enacted, That such augmented Churches, Curacies, and Chapels shall be considered in Law as Benefices presentative, so as that the Licence thereto shall operate in the same Manner as Institution to such Benefices, and shall render voidable other Livings, in like Manner as Institution to the said Benefices; and that it shall be lawful for the Bishop or Ordinary, within whose Jurisdiction such augmented Church, Curacy, or Chapel shall lie, to appoint, under his Hand and Seal, any Stipend or Allowance for the officiating Curate to be nominated or employed by the perpetual Curate or Incumbent thereof, not exceeding seventy-five Pounds *per Annum*, for which Payment the said Curate shall have the same and like Remedies as are herein before given to the Curates of Rectors and Vicars.

Churches augmented by Queen Anne's Bounty, to be deemed Benefices presentative, and the officiating Curate may have a like Stipend.

Benefices held with augmented Cures to be held by the present Incumbents.

IV. 'And whereas Doubts have been lately entertained, whether the Acceptance of such augmented Churches, Curacies, and 'Chapels has rendered violable in Law such other Benefices as the 'Incumbents possessed before their Acceptance of the same: And 'whereas it is fit that many Incumbents who have accepted such 'Churches, Curacies, and Chapels, should be quieted in the Possession of the Benefices they enjoyed before the Acceptance of the 'same;' it is hereby enacted and declared, That all such Benefices as were held in Conjunction with augmented Cures before the passing of this Act, shall continue to be held by the present Incumbents therewith; and that it shall not be lawful to present to the said Benefices until they shall become void or voidable by Death or Cession, or by other lawful Cause of Avoidance, arising after the passing of this Act.

Bishop or Ordinary may apportion the Stipend to officiating Curates of perpetual Curacies not augmented.

V. 'And whereas many perpetual Curacies, although not 'augmented by the Bounty of Queen ANNE, have nevertheless become considerable in Value by the Improvement of the Tythes or 'Glebe of which they happen to be endowed, or by other Circumstances;' be it further enacted, That the Bishop or Ordinary within whose Jurisdiction they lie, shall have the like Power, and under the like Limitations, and with the like Remedies, in apportioning the Stipends to be paid to the said officiating Curates by the Curates or Incumbents of perpetual Curacies, as is herein-before given respecting the Appointment of the Stipends to the Curates employed in perpetual Cures augmented.

Ordinary may licence Curates employed, though no Nomination shall have been made to him by the Incumbent, and may revoke any Licence, subject to Appeal to the Archbishop of the Province.

VI. 'And whereas it is expedient that the Authority of Ordina'ries to licence Curates, and to remove licenced Curates, should be 'further explained, enlarged, and confirmed;' be it enacted and declared, That it shall be lawful for the Ordinary to licence any Curate who is or shall be actually employed by the Rector, Vicar, or other Incumbent of any Parish Church or Chapel, although no express Nomination of such Curate shall have been made, either in Words or in Writing, to the Ordinary by the said Rector, Vicar, or other Incumbent; and that the Ordinary shall have Power to revoke, summarily and without Process, any Licence granted to any Curate employed within his Jurisdiction, and to remove such Curate for such good and reasonable Cause as he shall approve; subject, nevertheless, to an Appeal, as well in the Case of a Grant of a Licence to a Curate who has not been nominated, as in the Revocation of a Licence granted to a Curate; such Appeal to be made, in either Case, to the Archbishop of the Province, and to be determined in a summary Manner.

No. 28.

43 Geo. III. c. 84.—An Act to amend the Laws relating to Spiritual Persons holding of Farms; and for enforcing the Residence of Spiritual Persons on their Benefices in *England*.* [7th *July*, 1803.]

43 Geo. III c. 84.

21 H. VIII. c. 13

'WHEREAS many of the Provisions of an Act, made in the 'twenty-first Year of the Reign of his Majesty King HENRY 'the Eighth, intituled, *Spiritual Persons abridged from having Pluralities of Livings, and from taking of Ferms, &c.* and other 'the Laws now in Force relating to Spiritual Persons residing on 'their Benefices, have been found inconvenient; and it is expedient 'that certain of the Provisions of the said Act should be repealed, 'and that other Provisions should be made in lieu thereof, and that 'the said Act and Laws aforesaid should be amended, and more 'effectual Provisions made for enforcing the Residence of Spiritual 'Persons on their Benefices, and protecting Spiritual Persons from 'vexatious Prosecutions:' may it therefore please your Majesty that it may be enacted, and be it enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the passing of this Act, every Spiritual Person who shall before the passing of this Act, have incurred any pecuniary Penalty or Penalties, or any Forfeiture or Forfeitures under the said recited Act, for or in Respect of Non-residence or farming of Lands, and against whom no Action, Suit, Bill, Plaint, or Information, shall have been brought in Respect thereof under the said Act, shall be, and is hereby indemnified, freed, and discharged from the same, any Thing in the said recited Act to the contrary thereof notwithstanding; and all Contracts, Agreements, and Leases, made by Words, or otherwise, before the passing of this Act, by any Spiritual Persons, either by himself or any other to or for his Use, which if made after this Act would, according to the Provisions thereof, be good and valid, shall, notwithstanding the said recited Act, or any Act, or Law or Laws to the contrary, be and be deemed to be as good and valid in the Law, to all Intents and Purposes, as if the same had been made after the passing of this Act.

Spiritual Persons against whom no Action shall have been brought under recited Act indemnified, & Contracts which would be good after passing this Act, valid, notwithstanding recited Act.

II. And be it further enacted, That, immediately from and after the passing of this Act, it shall be lawful for any Person or Persons against whom any original Writ, Suit, Action, Bill, Plaint, or Information, shall have been sued out, commenced, or prosecuted, before the passing of this Act, for any pecuniary Penalty or Penalties, or any Forfeiture or Forfeitures incurred or alleged to be under the said recited Act, to apply to the Court in which such original Writ, Suit, Action, Bill, Plaint, or Information, shall have been sued out, commenced, or prosecuted, if such Court shall be sitting, or to any Judge of any such Court when not sitting, for an Order that such Writ, Suit, Action, Bill, Plaint, or Information, shall be discontinued, upon Payment of the Sum of ten Pounds in every Case where a Verdict shall be obtained, together with the Costs; and where no Verdict shall have been obtained, upon Payment of the Costs incurred up to the Time of such Application being made, all such Costs to be taxed as between Attorney and Client, according to the Practice of such Court, and every such Court or Judge is hereby authorized and

Persons sued under recited Act, may apply to the Court, if sitting, or to a Judge, if not sitting, to stay Proceedings upon certain Conditions.

* Provisions respecting the Residence of the Clergy in Ireland, similar to those of this Statute, are contained in stat. 48 Geo. III. c. 66.

No. 28, 43 Geo. III. c. 84.

required, upon such Application, to make such Order as aforesaid; and upon the making such Order, and Payment of such Costs as aforesaid, such Writ, Suit, Action, Bill, Plaint, or Information, shall be forthwith discontinued; and in every Case, until such Application shall be made as aforesaid, it shall be lawful for the Plaintiff or Plaintiffs, in any such original Writ, Suit, Action, Bill, Plaint, or Information, to proceed therein as if this Act, or an Act, passed in the forty-first Year of the Reign of his present Majesty, intituled, *An Act to stay, until the twenty-fifth Day of* March, *One Thousand Eight Hundred and Two, Proceedings in Actions under the Statute of King* HENRY *the Eighth, 'for abridging Spiritual Persons from having Pluralities of Livings, and from taking of Ferms,'* had not been passed; any Thing in this Act, or the said last recited Act, or in any other Act or Acts continuing the same, to the contrary thereof notwithstanding.

Till such Application Actions may proceed, notwithstanding this Act, or 41 Geo. III. (U K.) c. 102, &c.

III. Provided nevertheless, That in all cases in which any such Writ, Suit, Action, Bill, Plaint, or Information, shall have been sued out or commenced at any Time on or subsequent to the first Day of *July* One Thousand Eight Hundred and One, it shall be competent to such Court or Judge as aforesaid, to make such Order as aforesaid for discontinuing the same, without Payment of any Costs; and upon making such Order, such Writ, Suit, Action, Bill, Plaint, or Information, shall be forthwith discontinued.

Court or Judge may order any Suit commenced on or subsequent to July 1, 1801, to be discontinued.

IV. And be it further enacted, That, from and after the passing of this Act, it shall be lawful for any Spiritual Person to take to farm to himself, or to any Person or Persons to his Use, by Lease, Grant, Words, or otherwise, for Term of Life, for Term of Years, or at Will, any Messuage, Mansion, or Dwelling-House, with or without Orchards, Gardens, and other Appurtenances, although not in any City, Borough, or Town, any Thing in the said recited Act, or any other Act to the contrary thereof notwithstanding; and it shall also be lawful for any Spiritual Person having or holding any Donative, Perpetual Curacy, or Parochial Chapelry, not having any sufficient or convenient Glebe or Demesne Lands annexed to, or in Right of, or by reason of his Benefice or Cure or Chapelry, or for any Stipendiary Curate, or any unbeneficed Spiritual Person, with the Consent or Approbation of the Bishop of the Diocese, signified in Writing, to take to ferm to himself, or to any Person or Persons to his Use for a limited Term of Years, any Farm or Farms, Lands, Tenements, or Hereditaments, that may, under all the Circumstances, appear to such Bishop proper to be taken, held, or occupied by any such Spiritual Person, for the Convenience and Accommodation of his Household and Hospitality only, without being subject or liable to any Pains, Penalties, or Forfeitures, under the said first-recited Act or any other Act by reason thereof, any Thing therein contained to the contrary notwithstanding: Provided always, that nothing herein contained shall extend, or be construed to extend, to authorize any Non-residence of any such Spiritual Person as aforesaid.

Spiritual Persons may take Houses, &c. though not in a City, &c. and such as have not sufficient Glebe, may by Consent of the Bishop take Ferms.

V. And be it further enacted, That, from and after the passing of this Act, it shall be lawful for any Spiritual Person or Persons, by himself or themselves, or any other to his or their Use, to have, hold, use, or occupy in Ferm, any Manors, Lands, Tenements, or Hereditaments, demised, leased, or granted to such Spiritual Person or Persons, as the Property or Estate of such Spiritual Person or Persons, or to take, purchase, receive, or hold, as the Property and Estate of such Spiritual Person, any Lease or Leases for Life or Lives, or for Term or Terms of Years, absolute or determinable on any Life or Lives, or to take any annual Rent, or other annual Advantage or Profit by Occasion of any Lease or Ferm of any Manors,

May hold Estates as Property, but not any Farm for Cultivation, unless under a Lease granted on or before Jan. 1, 18[illegible] or by Consent of the Bishop.

No. 28.
43 Geo. III c. 84.

Lands, Tenements, or Hereditaments, the Property or Estate of any such Spiritual Person or Persons belonging to him or them, either in his or their own Right, or in the Right of any other Person or Persons, or in Right or by Reason of his or their having or holding any Spiritual Dignity or Benefice, or so taken, purchased, received, or held as aforesaid, as the Property or Estate of such Spiritual Person, without being subject to any Pains, Penalties, or Forfeiture whatever, under the said first-recited Act, or any other Act, any Thing therein contained to the contrary thereof notwithstanding: Provided always, that nothing herein contained shall extend, or be construed to extend, to authorize any Spiritual Person, having or holding any Dignity, Prebend, benefice, Donative, Perpetual Curacy, or Parochial Chapelry, or serving a Stipendiary Curacy, to take, receive, or hold any such Manors, Lands, Tenements, or Hereditaments, after the passing of this Act, for the Purpose of occupying or to occupy the same, for the Cultivation thereof, or procuring Profit therefrom, by himself or any Bailiff or Bailiffs, or Servant or Servants for his Use, unless the same shall have been taken, received, or holden under a Lease granted to such Person on or before the first Day of *January* One Thousand Eight Hundred and Three, or unless by the Consent or Approbation of the Bishop as aforesaid, signified in Writing.

May buy or sell Cattle or Corn for the Occupation of Farms

VI. And be it further enacted, That from and after the passing of this Act, it shall be lawful for any Spiritual Person, by himself, or by any other for him or to his Use, to bargain, and buy or sell again for any Lucre, Gain, or Profit, any Manner of Cattle or Corn that may be necessary, proper, or convenient to be bought, sold, kept, or maintained by such Spiritual Person, or any other Person for him or to his Use, for the Occupation, Manuring, Improving, Pasturage, or Profit of any Farms, Lands, Tenements, or Hereditaments, that may under and by virtue of any Law or Laws now in Force, or under any of the Provisions of this Act be lawfully held and occupied, possessed, or enjoyed, by such Spiritual Person, or any other for him or to his Use, without being subject to any Pains, Penalties, or Forfeitures, by reason thereof, under the said first-recited Act, or any other Act, or any Thing therein contained to the contrary thereof notwithstanding: Provided always, that nothing in this Act contained shall extend, or be construed to extend, to authorize any such Spiritual Person to buy or sell any Cattle as aforesaid, or Corn, in Person, in any Market, Fair, or Place of public Sale.

Vicars or Curates may take Leases of the Impropriate Parsonages of their Parishes;

VII. And be it further enacted, That, from and after the passing of this Act, it shall be lawful for any Spiritual Person having or holding any Vicarage or Perpetual Curacy, or for the Stipendiary Curate thereof respectively, to occupy by himself or by any other to his Use in Ferm, of the Lease or Grant of any Person or Persons, the Impropriate Parsonage, Rectory, or Vicarage respectively, of the Parish of which such Spiritual Person shall be the Vicar, or Perpetual Curate, or Stipendiary Curate, or any Part or Parts thereof repectively, or to take any Profit or Rent out of any such Farm, without being subject to any Pains, Penalties, or Forfeitures, by Means thereof, under the said first-recited Act; any Thing therein contained to the contrary thereof notwithstanding.

but where not occupied by a Spiritual Person before the Act, the Licence of the Bishop necessary.

VIII. Provided nevertheless, That in such Cases in which such Impropriate Parsonage, Rectory, or Vicarage, or such Part or Parts thereof as shall be so occupied as aforesaid, shall not at any Time before the passing of this Act, have been so occupied by the same, or any other such Spiritual Person as aforesaid, such Person shall remain liable to such Pains, Penalties, and Forfeitures, unless he shall have obtained the Licence of the Bishop for so occupying the same.

No. 20.
43 Geo. III. c. 84.

Clergymen licensed, or exempted from Residence, may occupy, where he resides, such Lands as the Bishop may allow.

IX. And be it further enacted, That any Clergyman, possessed of any Dignity, Prebend, Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, who shall be licensed or otherwise exempted from Residence under this or any other Act, may take to ferm and occupy in the Parish where he resides, or any adjoining Parish, such Lands for the Convenience and Accommodation of his Household and Hospitality only, as the Bishop of the Diocese in which he resides may allow by any Writing under his Hand.

13 Eliz. c. 20, and its continuing Statutes repealed.

X. And be it further enacted, That an Act, made in the thirteenth Year of the Reign of Queen Elizabeth, intituled, *An Act touching Leases of Benefices, and other Ecclesiastical Livings with Cure,* together with all and every Explanations, Additions, and Alterations thereof, made by several Statutes in the fourteenth, eighteenth, and forty-third Years of her said Majesty's Reign, and also so much of an Act made in the third Year of the Reign of King Charles the First, intituled, *An Act for Continuance and Repeal of divers Statutes,* whereby the same were made perpetual, be from henceforth repealed.

This Act shall not deprive Spiritual Persons of any Privileges.

XI. Provided always, and be it further enacted, That nothing in this Act contained shall extend, or be construed to extend, to deprive any Spiritual Person of any Privilege, Indemnity, or Permission, as to the taking, having, or holding any Ferms or Lands to which any such Spiritual Person was or would be entitled unto, under any of the Provisions of the said recited Act of his said late Majesty King Henry the Eighth, or any otherwise howsoever.

Penalty for Nonresidence, under recited Act 21 H. VIII. c. 13, repealed, and other Penalties imposed.

XII. And be it further enacted, That, from and after the passing of this Act, so much of the said first-recited Act as imposes the Penalty of ten Pounds, in the said Act mentioned, on any Spiritual Person therein described, who shall not keep Residence on one of his Dignities, Prebends, or Benefices, but absent himself wilfully by the Space of one Month together, or by the Space of two Months, to be accounted at several Times in any one Year, shall be and the same is hereby repealed; and that, from and after the passing of this Act, every Spiritual Person, being possessed of any Archdeaconry, Deanery, or other Dignity, Prebend, Benefice, Donative, or Perpetual Curacy, or Parochial Chapelry, who shall, without sufficient Cause, as in the said first-recited Act, or under an Act passed in the twenty-fifth Year of the Reign of King Henry the Eighth, intituled, *An Act that every Judge of the High Courts may have one Chaplain beneficed with Cure,* or under another Act, passed in the twenty-eighth Year of the Reign of King Henry the Eighth, intituled, *The Bill for Nonresidence of Spiritual Men and their Benefices,* or under another Act, passed in the thirty-third Year of the Reign of King Henry the Eighth, intituled, *An Act for the Chancellor of the Duchy of Lancaster and others to have Chaplains,* is specified, or such other sufficient Cause as would exempt such Spiritual Person from any of the Pains, Penalties, and Forfeitures under the said recited Acts for any Non-residence, and who shall not have any such Licence or Exemption as is in this Act mentioned for that Purpose, wilfully absent himself therefrom for the Space of three Months together, or to be accounted at several Times in any one Year, and make his Residence and Abiding at any other Place or Places, except at some other Dignity, Prebend, Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, of which he may be possessed, shall, when such Absence shall exceed such Period as aforesaid, and not exceed six Months, forfeit and pay one Third of the annual Value (deducting therefrom all Outgoings, except any Stipend paid to any Curate) of the Dignity, Prebend, Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, from which he shall so absent himself as aforesaid; and when

25 H. VIII. c. 16.

28 H. VIII. c. 13.

33 H. VIII. c. 28.

such Absence shall exceed six Months, and not exceed eight Months, one Half of such annual Value; and when such Absence shall exceed eight Months, two Thirds of such annual Value; and when such Absence shall have been for the Whole of the Year, three Fourths of such annual Value; to be recovered by Action of Debt, Bill, Plaint, or Information, in any of his Majesty's Courts of Record at *Westminster*, or the Courts of Great Sessions in *Wales*, wherein no Essoign, Privilege, Protection, or Wager of Law, or more than one Imparlance shall be allowed; and the Whole of every such Penalty or Forfeiture shall go and be paid to the Person or Persons who shall inform and sue for the same, together with such Costs of Suit as shall be allowed, according to the Practice of the Court in which such Action shall be brought; provided, that no Parsonage that hath a Vicar endowed, or Perpetual Curate, and having no Cure of Souls, shall be taken to be or be comprehended under the Name of Benefice, within the true Intent and Meaning, or for the Purposes of this Act.

No. 23. 43 Geo. III. c. 84.

No Parsonage that hath a Vicar endowed, &c. shall be deemed a Benefice.

XIII. And be it enacted, That the Court in which any such Action, Bill, Plaint, or Information, shall be depending, may and shall upon Application made for that Purpose, require by Rule or Order of the said Court, or any Judge thereof, the Archbishop or Bishop of the Diocese, within the Limits of which the Dignity, Prebend, Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, shall be locally situate, or to whom the same shall be subject, according to the Provisions of this Act, for or by reason of Non-residence, in, at, or upon which the Penalties and Forfeitures shall be sought to be recovered by such Action, Bill, Plaint, or Information, to certify in Writing under his Hand to the said Court; and also to the Party for that Purpose named in the said Rule or Order, the reputed annual Value of such Dignity, Prebend, Benefice, Donative, Perpetual Curacy, or Parochial Chapelry; and upon such Rule or Order being left with such Archbishop or Bishop, or the Register of such Archbishop or Bishop, such Archbishop or Bishop shall accordingly so certify such reputed annual Value, and such Certificate shall in all subsequent Proceedings upon such Action, Bill, Plaint, or Information, be received and taken as Evidence of the annual Value of such Dignity, Prebend, Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, respectively, for the Purposes of this Act, without Prejudice nevertheless to the Admissibility or Effect of any such other Evidence as may be offered or given respecting the actual Value thereof.

The Court in which any Action shall be depending, may require the Diocesan to certify the reputed annual Value of Benefices, &c.

XIV. Provided also, and be it further enacted, That no Spiritual Person being possessed of any Dignity, Prebend, Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, who shall have made his Residence and abided at his said Dignity, Prebend, Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, for the Space of one whole Year, without wilful Absence therefrom, for any longer Time than three Months together, or in the Whole at several Times, shall be liable to any of the Pains, Penalties, or Forfeitures in this Act or the said recited Act contained, for any previous Non-residence, unless the Action for the Recovery of such Penalties or Forfeitures shall have been actually commenced against such Person, previous to his having completed such Residence for one Year, in the Manner herein specified.

No Person having resided a Year without Absence for more than 3 Months, shall be liable for any previous Non-residence, unless the Action be commenced before he has so resided.

XV. And be it further enacted, That no Spiritual Person having or holding any Office, in such Manner as the same under any of the Provisions of the said first-recited Act, or of an Act passed in the twenty-fifth Year of the Reign of King Henry the Eighth, intituled, *An Act that every Judge of the High Courts may have one Chaplain qualified with Cure*; or of another Act passed in the 28th Year of the Reign of King Henry the Eighth, intituled, *The Bill for Non-*

Certain Persons exempted from Penalties for Non-residence. (See ante, sec. 19.)

No. 28. 43 Geo III. c. 84.

residence of Spiritual Men and their Benefices; or of another Act, passed in the thirty-third Year of the Reign of King HENRY the Eighth, intituled, *An Act for the Chancellor of the Duchy of* Lancaster *and others, to have Chaplains*; would exempt such Spiritual Persons from Residence, or from the Penalties and Forfeitures in the said Acts contained for Non-residence, or actually serving as a Chaplain of the House of Commons, or as Clerk of his Majesty's Closet, or as a Deputy Clerk thereof, during the Time of their respective Attendance, or as a Chaplain General of his Majesty's Forces, or Brigade Chaplain on foreign Service, or Chaplain on board any of his Majesty's Ships, or of his Majesty's Dock Yards, or in any of his Majesty's Garrison's, or Chaplain of his Majesty's Corps of Artillery, during the Times of attending the Duties of such Offices respectively, or as Chaplain to any *British* Factory, or in the Household of any *British* Ambassador or publick Minister residing Abroad, during the Time of his actually residing in such Factory or Household, and performing there at all due Times and Seasons the Duties of such his Office, or as Chancellor or Vicar General, or in his Absence the Principal Surrogate or Official in any Ecclesiastical Court of any Diocese, whilst they are residing in the Places where their respective Offices are exercised, or as Minor Canon, or Vicar Choral, or Priest Vicar, or any such other publick Officer in any Cathedral or Collegiate Church, during the Times for which they may be required by the Canons or local Statutes thereof to reside at such Cathedral or Collegiate Church, and actually reside and perform Duty at the same, or as Deans, Sub-Deans, Priests, or Readers in his Majesty's Royal Chapels at *Saint James's* and *Whitehall*, or as Reader in his Majesty's private Chapel at *Windsor* or elsewhere, or as Chaplain at the Royal Military Asylum at *Chelsea*, or Royal Military College at *High Wycombe*, or Teacher at the Royal Military Academy at *Woolwich*, or Chaplains at the Royal Hospitals at *Greenwich* and *Chelsea*, or as Chaplains to the Royal Hospitals for Seamen at *Haslar* and *Plymouth*, whilst they shall respectively reside and perform the Duties of their respective Offices, or as a Preacher or Reader in any of the Inns of Court or at the Rolls, or as Bursar, Dean, Vice President or publick Tutor or Chaplain, or other such publick Officer, in any College or Hall in either of the Universities of *Oxford* or *Cambridge*, during the Period for which he may respectively be required, by Reason of any such Office, to perform the Duties of any such Office, and actually shall perform the Duties of the same, or as publick Librarian or publick Registrar, or Proctor, or public Orator, or other such publick Officer, in either of the said Universities, during the Period for which he may respectively be required, by Reason thereof, to perform the Duties of any such Office, and actually shall perform the Duties of the same, or as Fellow of any College in either of the Universities, or of *Eton* or *Winchester College*, during the Time for which he may be required to reside by any Charter or Statute, and actually reside therein, or as Warden or Provost of *Eton* or *Winchester College*, during the Time for which they may be respectively required to reside, or shall actually reside therein, or as Schoolmaster or Usher in the same, or as Schoolmaster or Usher of *Westminster* School, shall be liable to any of the Pains, Penalties, or Forfeitures in the said first-recited Act or this Act contained, for or on account of any Non-residence on any Dignity, Prebend, Benefice, Donative, or Perpetual Curacy; any Thing in the said Act or this Act contained to the contrary notwithstanding.

Persons entitled under 28 H. VIII. c. 13, to Privilege of Non-residence till 40 Years, shall not be entitled to [illegible] after 28.

XVI. And be it further enacted, That, from and after the passing of this Act, no Person or Persons mentioned in an Act passed in the twenty-eighth Year of the Reign of King HENRY the Eighth, intituled, *The Bill for Non-residence of Spiritual Men and*

their Benefices, and entitled under the Provisions of the said Act or any other Act, to the Privilege and Liberty of Non-residence until after and above the Age of forty Years, shall be entitled to enjoy the Privilege and Liberty of Non-residence after or above the Age of thirty Years, without Prejudice nevertheless to any of the Exceptions and Savings contained in the said Act; any Thing in the said Act contained to the contrary notwithstanding. No. 28. 43 Geo. III. c. 84.

XVII. And be it further enacted, That no Penalty or Costs incurred by any Spiritual Person by Reason of any Non-residence on his Dignity, Prebend, Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, shall be levied by Execution against the Body of such Person, whilst he shall hold the same or any other Dignity, Prebend, Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, out of the Profits of which the same can be levied by Sequestration, within the Term of three Years; and in Case the Body of any such Spiritual Person shall be taken in Execution for the same, the Court in which the same was recovered, or any Judge thereof, may and shall, upon Application for that Purpose, discharge the Party from such Execution, in Case it shall be made to appear to the Satisfaction of such Court or Judge that such Penalty and Costs can be levied as aforesaid.

No Penalty shall be levied personally where it can be recovered by Sequestration of the Benefice in three Years.

XVIII. And be it further enacted, That, from and after the passing of this Act, it shall be lawful for the several Bishops respectively, in that Part of the United Kingdom of *Great Britain* and *Ireland*, called *England*, upon Application made for that Purpose by Petition in Writing, by any Spiritual Person having or holding any Dignity, Prebend, Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, locally situated within their respective Dioceses, upon such Proofs as to any Facts stated in any such Petition as any such Bishop may think necessary, if he shall require it, by Affidavit made before any Surrogate or Master Extraordinary in Chancery (which Oath any Surrogate or Master Extraordinary in Chancery is hereby authorized and required to administer,) to grant in such Cases as are hereinafter enumerated, where, on due Consideration of all the Circumstances stated in any such Application, and verified to the Satisfaction of the Bishop as aforesaid, such Bishop shall in his Discretion think it fit to grant the same, a Licence in Writing under his hand, expressing the Cause of granting the same, for the Non-residence of such Spiritual Person on his Dignity, Prebend, Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, for the Purpose of exempting such Person from any pecuniary Penalties or Forfeitures, under and subject nevertheless to the Regulations, Provisions, and Restrictions in this Act contained.

Bishops in England may grant Licences for Non-residence in certain Cases.

XIX. And be it further enacted, That it shall be lawful for any Bishop to grant Licences to any Spiritual Persons having any Dignity, Prebend, Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, within his Diocese, to reside out of the proper House of Residence, or out of the Parish, and within such Distance therefrom, as the Case may appear to such Bishop to require, if, upon the Consideration of all the Circumstances of any such Case, such Bishop shall in his Discretion think the same fit and proper, in the several Cases herein-after mentioned; (that is to say,) To any Spiritual Person who shall be prevented from residing in the proper House of Residence, or in the Parish, by actual Illness or Infirmity of Body of himself, or Wife or Child, making Part of, and residing with him as Part of his Family; and also to any Spiritual Person having or holding any Dignity, Prebend, Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, whereupon or wherein there shall be no House of Residence, or where the House of Residence shall be unfit for the

Cases in which any Bishops may grant Licences for Non residence.

No 28.
43 Geo. III. c. 84.

Residence of such Ecclesiastical Person, such Unfitness not being occasioned by any Negligence, Default, or other Misconduct of such Ecclesiastical Person, such Spiritual Person keeping such House of Residence in such Repair as shall be to the Satisfaction of the Bishop; and also to any Spiritual Person having or holding any Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, and having or possessing or occupying in the Parish of the same respectively, any Mansion or Messuage belonging to himself or any Relative, to reside in such Mansion or Messuage, such Spiritual Person keeping the House of Residence, and other Buildings belonging thereto, in good and sufficient Repair and Condition, to the Satisfaction of the Bishop; and also to any Spiritual Person having or holding any Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, of small Value, and serving as a Stipendiary Curate elsewhere, with the Licence of the Bishop of the Diocese, and providing for the serving of such his Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, to the Satisfaction of the Bishop of his Diocese; and also to any Master or Usher of any endowed School duly licensed by the Bishop, and actually employed in teaching therein, or to the Master of any other School who now is or shall be, within one Month after the passing of this Act, duly licensed by the Bishop; and also to any Master or Preacher of Hospitals or incorporated charitable Foundation during the Period for which he may be required to reside by any Charter or Statute of any such Hospital or incorporated charitable Foundation, or by any other lawful Authority, in the same, and shall actually reside and perform his Duties therein; or to any Person holding any endowed Lectureship, or endowed Chapelry, or endowed Preachership, and performing and executing the Duties thereof respectively; or to any Spiritual Person having or holding any Benefice, Donative, Perpetual Curacy, or Parochial Chapelry of small Value, and serving as Preacher in any Proprietary Chapel in Cities or Towns, with the License of the Bishop in whose Diocese he shall so officiate; or to the Librarians of the *British* Museum, or of *Sion* College; or to the Trustees of Lord *Crewe's* Charity, during the Times of their personal Attendance on the Duties of their Office: Provided always, that for any such Licence, the Party obtaining the same shall not pay more to the Secretary or Officer of the Bishop than the Sum of ten Shillings, exclusive of any such Stamps as may be required by Law: Provided always, that if any Spiritual Person applying to any Bishop for any such Licence, shall think himself aggrieved by the Refusal thereof; it shall be lawful for such Spiritual Person to appeal to the Archbishop of the Province, who shall forthwith, either by himself, or some Commissioner or Commissioners appointed from among the other Bishops of this Province, under his Hand, make, or cause to be made, Enquiry into the same, and by Writing, signed by himself, confirm such Refusal, or grant a Licence under this Act, as shall seem just and proper: Provided nevertheless, that the Party appealing shall give Security to the Bishop for the Payment of such reasonable Expences occasioned by the Appeal, as the Archbishop, or his Commissioner or Commissioners shall award.

Fee for Licences

Persons aggrieved by Refusal of Licences, may appeal to the Archbishop.

Security by Party appealing

In Cases not enumerated, Bishops may grant Licences and assign Stipends to Curates employed

XX. And be it further enacted, That, from and after the passing of this Act, it shall be lawful for any such Bishop as aforesaid, in any Cases not herein-before enumerated, in which, under all the Circumstances of any such Cases, such Bishop shall think it expedient to grant to any such Spiritual Person possessed of any Dignity, Prebend, Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, a Licence to reside out of the proper House of Residence, or out of the Parish, as the Case may be, or as the Case may appear to such Bishop to require, and to assign, in any Case in which, the

No. 28.
43 Geo. III c. 84.

Stipendiary Curate may be employed to do the Duty of such Spiritual Person, such Salary as he shall judge fit to appoint, due Respect being had to the Value of the Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, and to all the other Circumstances of the Case: Provided always, that in every such Case the Nature and special Circumstances thereof, and the Reasons that have induced such Bishop to grant such Licence as aforesaid, shall be forthwith, by himself, or by some Commissioner or Commissioners appointed for that Purpose from among the Bishops of such Province, by Writing under his Hand, which Commissioner or Commissioners is and are thereupon authorised to take upon himself or themselves the Execution of the said Commission, examine into such Case, and make such Enquiries as to any Particulars relating thereto, as such Archbishop or Commissioner or Commissions so appointed as aforesaid may think necessary, and after such Enquiries made by himself, or where the same shall be made by such Commissioner or Commissioners, after a Return of the Substance thereof, in Writing, to such Archbishop, such Archbishop shall thereupon allow or disallow such Licence, in the Whole or in Part, or make any Alteration therein as to the Period for which the same may have been granted, or otherwise, and likewise as to the Stipend assigned to the Curate, as to such Archbishop shall seem fit; and no such Licence shall be good, valid, or effectual, under this Act, for any Purpose whatever, unless it shall have been so allowed and approved by such Archbishop; such Allowance thereof being signified by the signing thereof by such Archbishop: Provided always, that it shall be necessary in such Licence to specify the Cause of granting the same: Provided also, that no Licence granted under this Act shall be made void by the Death or Removal of the Bishop or Archbishop granting the same, but the same shall be and remain good and valid notwithstanding any such Death or Removal, unless the same shall be revoked by the next or any succeeding Bishop or Archbishop, as the Case may require: Provided also, that any Spiritual Person may appeal against any such Revocation by the Bishop alone, in like Manner as is herein-before directed in Case of any Refusal of any Licence: Provided also, that the respective Archbishops may, in their respective Dioceses of which they are Bishops, grant Licences under the Provisions and Regulations in this Act contained, in all Cases in which any Licences may be granted by any Bishop under this Act, either by his own Authority, or with the Allowance and Approval of the Archbishop as aforesaid: Provided also, that it shall be lawful for any such Archbishop to order and direct such reasonable Fees and Charges to be paid by any such Spiritual Person appealing as aforesaid, in Respect of any such Proceedings as aforesaid, as he shall in his Discretion think fit: Provided always, that in every Case when any Costs and Charges directed by such Archbishop or Bishop as aforesaid, shall remain unpaid for the Period of twenty-one Days after Demand thereof left at the usual or last Place of Abode of the Person liable to the Payment, it shall be lawful for such Bishop or Archbishop respectively to cause the same to be recovered by Sequestration of the Profits of the Dignity, Prebend, Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, of such Spiritual Person as aforesaid, and which Sequestration such Archbishop or Bishop are respectively hereby empowered to issue

Reasons for granting Licence to be given.
Archbishop's approbation and Allowance.

Licence not to be void by Death of the Grantor, unless revoked by the Successor.

Archbishops in their respective Dioceses, may grant Licences.

Fees may be ordered to be paid by Appellants.

Costs may be recovered by Sequestration.

XXI. Provided always, and be it further enacted, That it shall be lawful for any Bishop or Archbishop who shall have granted any Licence for Non-residence as aforesaid, or any Successor or Successors of any such Bishop or Archbishop, to revoke any such Licence, in any Case in which it may appear to him or them proper and expedient to revoke the same: Provided also, that no Licence for Non-residence

Licences may be revoked.

None to be in Force more than two Years.

No. 28. granted under this Act shall continue in Force for more than two
43 Geo III. c. 84. Years from the granting thereof.

Copies of Licences or Revocations shall be filed in the Registry of the Diocese, and a List kept for Inspection; and Copies of certain Licences & Revocations shall be transmitted to Churchwardens, and publickly read at the first Visitation.

XXII. And be it further enacted, That every such Bishop or Archbishop who shall grant or revoke any Licence under this Act, shall and he is hereby required to cause a Copy of such Licence or Revocation to be filed in the Registry of the Diocese within which such Dignity, Prebend, Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, in Respect whereof any such Licence shall be granted or Revocation made, shall be locally situate; and an Alphabetical List of such Licences and Revocations shall be made out by the Register of the said Diocese, and entered in a Book, and kept for the Inspection of all Persons, upon Payment of the Sum of two Shillings, and no more; and a Copy of every such Licence and Revocation, with Respect to any Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, shall be transmitted to the Churchwardens of the Parish to which the same relates, within one Month after the grant of such Licence or Revocation thereof, to be by them deposited in the Parish Chest; and a Copy of the same shall likewise be publicly read at the Visitation of the Archdeacon of the Archdeaconry within which the Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, in Respect whereof the Licence shall have been granted or Revocation made, shall be locally situate, immediately next succeeding the granting or Revocation thereof.

A List of Licences confirmed by the Archbishop, or granted in his own Diocese, shall be annually transmitted to his Majesty in Council, who may revoke Licences, &c.

XXIII. Provided also, and be it further enacted, That every Archbishop who shall confirm in Manner directed by this Act any Licence or Licences in any Case or Cases not enumerated in this Act, or who shall grant any Licence in his own Diocese, shall annually on or before the thirty-first Day of *January* in each Year, transmit to his Majesty in Council a List of all such Licences so confirmed or granted respectively as aforesaid, in the Year ending on the last Day of *December* preceding such thirty-first Day of *January*; and shall, in every such List, specify the Reasons transmitted to him by the Bishops of the several Dioceses, for granting the said Licences, and the Reasons which have induced him to confirm the same, and also the Reasons which have induced him to grant any such Licence as aforesaid within his own Diocese; and it shall be lawful for his Majesty in Council, by any Order made for that Purpose, to revoke and annul any such Licence, and if his Majesty in Council shall think fit so to do, the same shall be transmitted to the Archbishop who shall have confirmed or granted such Licence, who shall thereupon cause a Copy of every such Order made in relation to any Licence confirmed by him as afore mentioned, to be transmitted to the Bishop of the Diocese in which such Licence shall have been granted, who shall thereupon cause a Copy of the mandatory Part of the said Order to be filed in the Registry of such Diocese, and a like Copy to be delivered to the Churchwardens of the Parish to which the same relates, in Manner herein-before directed as to Licences under this Act; and every such Archbishop shall cause a Copy of the mandatory Part of every such Order made in Relation to any such Licence as aforesaid granted by him in his own Diocese, to be in like Manner filed in the Registry of his Diocese, and a like Copy also to be delivered to the Churchwarden of the Parish to which such Licence shall relate, in Manner before mentioned.

Between the Grant and Revocation of a Licence, it shall be deemed valid.

XXIV. Provided always, That after such Licence shall have been so revoked by his Majesty in Council, the same shall nevertheless, in all Questions that shall have arisen or may thereafter arise, touching the Non-residence of the Spiritual Person to whom the same shall have been granted, between the Period at which the same were

No. 28.
43 Geo. III. c. 84.

granted or confirmed, and the Time at which the same were granted or confirmed, and the Time at which the same shall be so revoked as aforesaid, be deemed and taken to be, and to have been valid and effectual to the Intents and Purposes of this Act.

On or before March 25, 1805, and so annually, a Return shall be made to his Majesty in Council of every Benefice, &c. and of the Persons who shall not have resided thereon; and every Non-resident, after January 1, 1804, by Exemption, without Licence, shall yearly notify the Nature of it to the Diocesan.

XXV. And be it further enacted, That, on or before the twenty-fifth Day of *March*, One Thousand Eight Hundred and Five, and at the like Period in every succeeding Year, a Return or Returns shall be made, to his Majesty in Council, by every such Archbishop and Bishop, of the Names of every Dignity, Prebend, Benefice, Donative, Perpetual Curacy, and Parochial Chapelry, within their respective Dioceses, or subject to their respective Jurisdictions, by Virtue of this Act; and the Names of the several Persons possessing the same, who shall not have resided thereon by Reason of any Exemption under or by Virtue of this Act or any other Act, or by Reason of any Licence granted by such Archbishop or Bishop respectively, for any and what Cause enumerated by this Act; and also of all the Persons possessing the same, not having any such Exemption or Licence, who shall not have resided on such Dignity, Prebend, Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, so far as the Bishop is informed thereof; and for the Purpose of enabling the Archbishops and Bishops to make such Return as aforesaid, every Person who shall be non-resident in any Year subsequent to the first Day of *January* in the Year One Thousand Eight Hundred and Four, by Reason of any Exemption under this Act or any other Act, and to entitle him to which, it is not necessary to obtain any Licence under this Act, shall, within six Weeks from and after the first Day of *January*, in every following Year, notify the same in Writing, under his Hand, to the Archbishop or Bishop of the Diocese to whose Jurisdiction he is subject by this Act, or otherwise, in Respect of such Dignity, Prebend, Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, specifying the Nature of such Exemption: Provided always, that it shall be lawful for the Person making such Notification, to deliver, or cause to be delivered to the Registrar of such Diocese as aforesaid, a Duplicate of such Notification in Writing, and which Duplicate such Registrar is hereby required to file and preserve in the Registry of such Diocese; and in all Cases in which any Question shall arise, whether any such Person as aforesaid has made such Notification as is required by this Act as aforesaid, a Copy of such Duplicate, certified under the Hand of the Registrar of the Diocese for the Time being, together with the Time of filing the same, and which Certificate such Registrar is hereby required to give, upon Application for that Purpose made by or on Behalf of the Party interested, shall be deemed and taken to be Evidence that the Party required to make such Notification as aforesaid hath made the same.

A Duplicate of such Notification may be delivered to the Registrar to be filed, and his Certificate shall be Evidence of its being made.

Persons neglecting to make Notification shall not be entitled to Exemption.

XXVI. 'And, to the Intent to enforce such Persons as aforesaid 'from Time to Time duly to make such Notification as aforesaid,' be it enacted, That if any Person shall wilfully neglect to make such Notification as aforesaid, the Person so neglecting shall not be or be deemed to be entitled, from and after the Expiration of such six Weeks, to the Benefit of such Exemption as aforesaid, until he shall have made such Notification as aforesaid, notwithstanding such subsequent Notification, shall not be or be deemed to be entitled to such Exemption in Respect of any Non-residence which shall have taken place between the Expiration of such six Weeks, and the Time of making such subsequent Notification; and in all Cases in which any Question shall arise, whether such Neglect was wilful, the same shall be taken to have been wilful, unless the contrary is proved by the Person claiming such Exemption.

No. 26.
43 Geo. III. c. 84.

Licence may be pleaded in bar of Action; and in Case of Nonsuit, &c. the Defendant shall have Costs.

XXVII. And be it further enacted, That it shall be lawful for any Spiritual Person to whom any such Licence for Non-residence shall have been granted, and against whom any Action shall thereafter be brought for any Penalty or Forfeiture under this or any other Act, by Reason of any Non-residence, or any Matter or Thing relating whereto any Licence under this Act has been granted, to plead such Licence in bar of any such Action; and if the Plaintiff in such Suit or Action shall be nonsuit, or shall discontinue any such Suit or Action after any Plea of Licence shall have been pleaded thereto under this Act, then and in such Case the Defendant in such Suit or Action shall have full Costs of Suit; and if in any such Suit or Action a Verdict shall be given for the Defendant, the Defendant shall have Treble Costs, and have the like Remedy for the same as any Defendant hath in other Cases to recover Costs by Law.

By whom Licences may be granted, while a See is vacant, or the Prelate absent, &c.

XXVIII. Provided always, and be it further enacted, That during the Vacancy of any See, the Power of granting Licences under this Act, subject to the Regulations therein contained, shall be exercised by the Vicar General of the Diocese; and that during the Absence of any Prelate out of the Realm, or such Infirmity as disables him from exercising in Person the Functions of his Office, it shall be exercised by such Person or Persons as is or are lawfully empowered to exercise his general Jurisdiction in the Diocese.

Act not to exempt from Censure Non-residence without Licence; but no Censure for Non-residence not exceeding 3 Months in 1 Year, shall be put in Force, nor any Proceedings be admitted except at the Suit of the Bishop or Archdeacon.

XXIX. And be it further enacted, That nothing in this Act contained shall extend, or be construed to extend, to exempt any Person or Persons from any Canonical Ecclesiastical Censure affect any Proceedings that shall hereafter be instituted in any Ecclesiastical Court, in order to cause the same to be inflicted in relation to the Non-residence of any Spiritual Person, having or holding any Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, not being duly licenced according to the Provisions of this Act to be absent therefrom, nor having any other lawful Cause of Absence: Provided always, that, from and after the passing of this Act, no such Censures by Reason of any Non-residence, not exceeding three Months in any one Year, shall be put in Force, nor shall any Proceeding be admitted in any Ecclesiastical Court against any such Spiritual Person for such Non-residence not exceeding three Months in any one Year, at the Suit or Instance of any Person or Persons other than the Archbishop, Bishop, or Archdeacon only of the Diocese and Archdeaconry within such Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, in Respect whereof such Non-residence shall have taken Place, shall be locally situated; any Thing in any Law or Laws, or Ecclesiastical Canon or Canons, to the contrary thereof notwithstanding.

If any unlicensed Person does not sufficiently reside, the Bishop may issue a Monition, &c.

XXX. And be it further enacted, That in every Case in which it shall appear to any such Bishop or Archbishop as aforesaid, that any Spiritual Person having or holding any Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, and not being licensed according to this Act to be absent therefrom, nor having any other lawful Cause of Absence from the same, does not sufficiently reside on the same respectively, it shall be lawful for such Bishop or Archbishop to issue, or cause to be issued, a Monition, to such Spiritual Person, forthwith to proceed to and reside thereon, and perform the Duties thereof, and to make a Return to such Monition within a certain Number of Days from the issuing thereof; so as that in every such Case there shall be thirty Days between the Time of delivering such Monition to such Spiritual Person, or leaving the same at his then usual or last Place of Abode, or if not there to be found, with the officiating Minister, or one of the Churchwardens, and also at the House of Residence (if any such there be) belonging to such Benefice,

No 28.
43 Geo. III. c. 84.

Donative, Perpetual Curacy, or Parochial Chapelry, to which any such Spiritual Person shall be required by such Monition to proceed and reside thereon, and the Time specified in such Monition for the Return thereto; and every such Monition shall immediately on the issuing thereof be filed in the Registry, and open for Inspection on the Payment of two Shillings, and no more; and the Spiritual Person to whom any such Monition shall be sent under this Act, shall, within the Time specified for that Purpose, make a Return thereto; and it shall be lawful for the Bishop or Archbishop to whom any such Return shall be made to require such Return, or any Facts contained therein, to be verified by the Oath of any such Spiritual Person, or others, to be taken before some Surrogate or Master Extraordinary in Chancery, which Oath any such Surrogate or Master Extraordinary in Chancery is hereby authorized and required to administer, on Application being made for that purpose; and in every Case where no such Return shall be made, or where such Return shall not state such Reasons as shall be deemed satisfactory by such Bishop or Archbishop for the Non-residence of the Spiritual Person to whom such Monition shall have been sent as aforesaid, or where the same or any of the Facts contained therein shall not be so verified upon Oath as aforesaid, when the same shall have been required, then and in such Case it shall be lawful for such Bishop or Archbishop to issue an Order in Writing, under his Hand and Seal, to require such Person to proceed to and reside as aforesaid, within thirty Days after such Order in Writing, or a Copy thereof, shall have been delivered or left in like Manner as is herein-before required as to Monitions; and in Case of Non-compliance, it shall be lawful for such Bishop or Archbishop to sequester the Profits of such Benefice, Donative, Perpetual Curacy, or Parochial Chapelry of such Spiritual Person as aforesaid, until such Order shall be complied with, or such sufficient Reasons for Non-residence stated and proved as aforesaid; and to direct, by any Order to be made for that Purpose under his Hand, the Application of such Profits, after deducting the necessary Expences of serving the Cure, either in the Whole or in such Proportion as he shall think fit, in the first Place to the Payment of such reasonable Expences as shall have been incurred in relation to such Monition and Sequestration, and in the next Place towards the Augmentation or Improvement of any such Parsonage, Vicarage, Donative, or Perpetual Curacy, or the House of Residence thereof, or any of the Buildings and Appurtenances thereof, or towards the Improvement of any of the Glebe or Demesne Lands thereof; or may order and direct the same, or any Portion thereof, to be paid to the Governors of the Bounty of Queen Anne for the Augmentation of the Maintenance of the Poor Clergy, to be applied for the Purpose of such Augmentation as such Bishop or Archbishop shall in his Discretion, under all Circumstances, think fit and expedient; and it shall also be lawful for any such Bishop or Archbishop, within six Months after such Order for Sequestration, or within six Months after any Money shall have been actually levied by such Sequestration, to remit to any such Spiritual Person any Part or Proportion of such sequestered Profits, or cause the same or any Part thereof that shall have been paid or directed to be paid to such Governors of Queen Anne's Bounty to be repaid to such Spiritul Person, which Repayment the said Governors are hereby authorized and required, upon an Order under the Hand of any such Bishop or Archbishop, to make out of any Money then in their Hands, or if no Money shall then be in their Hands, out of the next Money that shall come to their Hands, in any Case in which by Reason of the subsequent Obedience of any such Spiritual Person to any such Monition or Order, or the stating and proving such sufficient Reasons as afore-

Returns shall be made to Monitions, which may be required to be upon Oath.

Where Returns shall not be made, or not be satisfactory, the Bishop may order Residence, and if disobeyed, may sequester the Profits of the Benefice, and direct an Application thereof.

No. 98.
43 Geo III c 84

Appeal against Sequestrations may be made to the Archbishop.

said, such Bishop or Archbishop shall think the same proper: Provided always, that when any such Spiritual Person shall think himself aggrieved by Reason of any such Sequestration issued by any Bishop, it shall be lawful for any such Spiritual Person within fifteen Days after the making any Order for any such Sequestration as aforesaid, and upon such Notice thereof, to be served in like Manner as the Monition herein-before directed, to appeal to the Archbishop of the Province to which such Bishop shall belong, who shall forthwith, either by himself or some Commissioner or Commissioners appointed from among the Bishops of his Province for that Purpose under his Hand and Seal, make or cause to be made due Enquiry into the same, and make such Order therein or relating thereto, or to the Profits that shall be so sequestered as aforesaid, for the Return to such Spiritual Person of the same or any Part thereof, or otherwise, as shall, under all the Circumstances of the Case, appear to such Archbishop (after such Enquiry made by himself or by his Commissioner or Commissioners, and in the latter Case, after the Substance of such Enquiry shall have been returned in Writing to the said Archbishop) to be just and proper: Provided always, that the Party so appealing shall give Security to the Bishop for the Payment of such reasonable Expences occasioned by the Appeal as the Archbishop or his Commissioner or Commissioners shall award: Provided also, that no such Order for any Sequestration shall be put in Force during such Appeal as aforesaid, and until the same shall be determined.

Appellant shall give Security.

Persons who shall return to Residence on Monition, shall pay the Costs.

XXXI. Provided also, and be it further enacted, That every Spiritual Person to whom any such Monition or Order in Writing shall be sent as aforesaid under this Act, who shall be at the Time of the issuing thereof absent from Residence in or upon his Benefice, his Donative, Perpetual Curacy, or Parochial Chapelry, contrary to the Provisions of this Act, but who shall, in Obedience to such Monition or Order, forthwith return to due Residence, and the Profits of whose Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, shall, by reason of such Return, not be sequestered, shall nevertheless pay all Costs, Charges, and Expences incurred by reason of the issuing and serving such Monition or Order; to be levied as any Costs may be levied on any Spiritual Person by any Archbishop or Bishop, under any of the Provisions of this Act.

If any Person returning to Residence on Monition, shall before six Months thereafter absent himself, the Bishop may, without Monition, sequester the Profits of the Benefice.

XXXII. 'And, to the Intent effectually to enforce *bona fide* 'Residence, according to the Intent and Meaning of such Monitions 'and Orders as aforesaid;' be it further enacted, That if any Spiritual Person not licensed under this Act to be absent from his Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, nor having other lawful Cause of Absence from the same, who, after any such Monition or Order as aforesaid, requiring his Residence, and before or after any such Sequestration as aforesaid, shall, in Obedience to such Monition or Order, have begun to reside upon his Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, shall afterwards, and before the Expiration of six Months next after the Commencement of such Residence, in the Judgment and without the Leave of such Archbishop or Bishop, begin wilfully to absent himself from such Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, it shall be lawful for such Archbishop or Bishop, without issuing any other Monition, or making any other Order, again to sequester and apply the Profits of such Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, as is before directed by this Act, for the Purpose of enforcing the Residence of such Spiritual Person, according to the true Intent of the original Monition issued by such Archbishop or Bishop as aforesaid; and it shall be lawful for the Archbishop or Bishop so to proceed in like Cases from Time to Time, as often as Occasion may require; provided

No. 26.
43 Geo. III c. 84.

that, in each and every of such Cases, such Spiritual Person shall be entitled to appeal against such Sequestration, in such Manner and upon such Terms as herein-before is and are mentioned touching Appeals respecting Sequestrations; but nevertheless the same shall be in Force during such Appeal.

If a Clerk shall continue under Sequestration three Years, or incur three Sequestrations within that Period, the Benefice shall become void.

XXXIII. And be it further enacted, That if any Clerk shall continue under any Sequestration made under the Provisions of this Act, for Non-residence, for the Space of three Years, or shall, under the Provisions of this Act, incur three Sequestrations in the said Space of three Years, not being relieved, with respect to any of such Sequestrations, upon Appeal, the Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, in relation to Non-residence upon which such Sequestration shall have been made, shall become *ipso facto* void, and the Patron or Person entitled to present or nominate some Clerk thereto, other than the Clerk who shall have so continued under such Sequestration or Sequestrations, as if the same had been avoided by the natural Death or Resignation of the Party.

Contracts after passing this Act, for letting Houses in which any Spiritual Persons shall be ordered by Order of the Bishop, &c. to reside, void; & Persons holding the Premises after the Day appointed shall be subject to Penalty; but in Cases of Contracts before passing this Act, not till three Months after Service on the Occupier, &c.

XXXIV. And be it further enacted, That all Contracts or Agreements made after the passing of this Act, for the letting of Houses of Residence, or the Buildings, Gardens, Orchards, and Appurtenances necessary for the convenient Occupation of the same, belonging to any Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, to which Houses of Residence any Spiritual Persons shall be required, by Order of the Archbishop or Bishop as aforesaid, to proceed and to reside therein, a Copy of which Order shall, immediately on the issuing thereof, be transmitted to one of the Churchwardens of the Parish, and be by him forthwith served on the Occupier of such House of Residence, or left at the same, and which such Churchwarden is hereby required to serve accordingly, shall be null and void; and any Person continuing to hold any such House of Residence, or any such Building, Garden, Orchard, or Premises, after the Day on which the said Spiritual Person shall be directed by the said Order to reside in such House of Residence, and after Service of such Copy as aforesaid, shall forfeit the Sum of forty Shillings for every Day he shall, without the Permission of the Archbishop or Bishop in Writing for that Purpose obtained, wilfully continue to hold any such House, Building, Garden, Orchard, or Premises, to be recovered and applied in like Manner as the Penalties for Non-residence are directed to be recovered and applied by the Provisions of this Act; but in Cases of such Contracts or Agreements made before the passing of this Act, the Person holding and occupying under any such Contract or Agreement shall not be liable to any Penalty for three Calendar Months from the Time of the Service of the Copy of such Order of the Archbishop or Bishop as aforesaid upon such Occupier, or at such House of Residence as aforesaid, and Sequestration shall not issue for Disobedience to the Order of the Archbishop or Bishop for three Calendar Months, to be computed from the Service of the Copy of the said Order, at the Expiration of which Time it shall be lawful for the Archbishop or Bishop to issue Sequestration; and from and after the Expiration of which Time the Party continuing to hold any such House, Building, Garden, Orchard, Premises, or Appurtenances as aforesaid, shall forfeit the Sum of forty Shillings for every Day he shall wilfully continue without such Permission in Writing as aforesaid to hold the same, or any of them, to be recovered and applied in like Manner as aforesaid.

No Person liable to Penalty for Non-residence while the Tenant shall continue to occupy.

XXXV. Provided always, and be it further enacted, That no Spiritual Person shall be liable to any Penalties under this or any former Act, for not residing in such House of Residence during such

No. 28. 43 Geo. III c. 84.

Time as such Tenant shall continue to occupy such House of Residence, and other Buildings necessary to the Occupation of the same.

If any Action be brought for Non-residence before issuing Monition, a Sum sufficient to satisfy Penalty and Costs shall be retained out of the Benefice.

XXXVI. Provided always, and be it further enacted, That where any Action, Suit, Bill, Plaint, or Information, shall have been commenced or brought against any Spiritual Person to whom any Monition shall be sent as aforesaid, before the issuing thereof, for any Penalty or Forfeiture incurred by reason of the Non-residence of any such Spiritual Person before the issuing of such Monition, then and in such Case the Bishop or Archbishop sending such Monition as aforesaid, shall, upon Notice of such Action or Suit, cause to be retained the Profits, or so much of the Profits of the Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, in respect whereof such Action or Suit shall be brought, and Monition issued as aforesaid, and which may under this Act be sequestered as aforesaid, as will be sufficient to satisfy any Penalty or Penalties for which any such Action or Suit shall be brought, together with such Costs as the Plaintiff or Plaintiffs therein may be entitled to, if any, and shall, if a Verdict shall be given for the Plaintiff or Plaintiffs in such Action, and final Judgement obtained therein, after deducting all the Charges which shall have been occasioned by the said Sequestration, to the Bishop or Archbishop, or any Person or Persons who shall have acted therein under his Authority, pay or cause to be paid to such Plaintiff or Plaintiffs the Sum or Sums of Money that shall be recovered in any such Action or Suit, to the Plaintiff or Plaintiffs therein; Provided always, that if at the Time of filing any such Monition as aforesaid no Action for any such Penalty or Forfeiture shall have been already commenced against such Spiritual Person, then and in such Casse no such Action, Suit, Bill, Plaint, or Information, shall be afterwards brought for any Penalty or Forfeiture incurred by reason of any Non-residence of such Spiritual Person before the issuing of such Monition, or during any Proceedings that may be had under such Monition: and if any such Action or Suit shall be so commenced, the Defendant therein may plead in bar thereof, that such a Monition as aforesaid has issued in respect of the same Parsonage, Vicarage, Donative, Perpetual Curacy, or Parochial Chapelry; and such Defendant, unless upon Application to the Court the same shall be dispensed with, shall upon pleading such Matter file or cause to be filed an Affidavit in the said Court, thereby stating that, according to the Belief of the Defendant, the Bishop or Archbishop who has issued or caused such Monition to be issued is proceeding or intends to proceed upon the said Monition, to the Intent to make the same effectual to the Intents and Purposes of this Act, otherwise such Plea shall not be good or available in the Law.

If at the Time of filing any Monition no Action shall have been commenced, none shall be afterwards brought, &c.

No Oath relating to Residence shall be required of any Vicar.

XXXVII. And be it further enacted, That, from and after the passing of this Act, no Oath shall be required of or taken by any Vicar in relation to Residence on his Vicarage; any Law, Custom, Constitution, or Usage to the contrary thereof notwithstanding.

Act extended to all Dignities, Prebends, Benefices, &c.

XXXVIII. And be it further enacted, That, from and after the passing of this Act, all and every the Clauses, Provisions, Penalties, and Forfeitures in this Act contained, in relation to Residence, or to any other Matters and Things relating thereto, shall extend, and be deemed and construed to extend to all Dignities, Prebends, Benefices, Donatives, Perpetual Curacies, and all Parochial Chapelries, exempt as well as not exempt, and all Peculiars, as fully and amply to all Intents and Purposes as if the same had been and were in this Act particularly mentioned and specified; any Thing in any Act or Acts, Law or Laws, to the contrary thereof notwithstanding.

No. 28.
43 Geo. III. c. 84.

XXXIX. And be it further enacted, That every Archbishop, Bishop, and Archdeacon, within the Limits of whose Province, Diocese, or Jurisdiction respectively, any Dignity, Benefice, Donative, Perpetual Curacy, or Parochial Chapelry respectively, exempt or peculiar, shall be locally situate, shall have, use, and exercise all the Powers and Authorities necessary for the due Execution by them respectively of the Provisions and Purposes of this Act, and for enforcing the same with regard thereto respectively, as such Archbishop, Bishop, and Archdeacon respectively would have used and exercised if the same were not exempt or peculiar, but were subject in all Respects to the Jurisdiction of such Archbishop, Bishop, or Archdeacon; and also that where any Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, exempt or peculiar, shall be locally situate within the Limits of more than one Province, Diocese, or Jurisdiction, or where the same or any of them shall be locally situate between the Limits of any two or more of such Provinces, Dioceses, or Jurisdictions, or any of them, the Archbishop or Bishop to the Cathedral Church of whose Province or Diocese the Parish Church of the same respectively shall be in local Situation, shall have, use, and exercise all the Powers and Authorities which are necessary for the due Execution of the Provisions of this Act, and enforcing the same with regard thereto respectively, as such Archbishop or Bishop could have used if the same were not exempt or peculiar, but were subject in all Respects to the Jurisdiction of such Archbishop or Bishop respectively; and the same, for all the Purposes of this Act, shall be deemed and taken to be within the Limits of the Province or Diocese of such Archbishop or Bishop; and the same shall also, for the Purposes of this Act, be taken to be within the Archdeaconry of, and be subject to the Jurisdiction of such Archdeacon as hath Jurisdiction as such over the Parish, the Parish Church of which is nearest to the Church of such Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, exempt or peculiar; any Thing in any Act or Acts, Law or Laws, Usage or Usages, or other Matter or Thing to the contrary notwithstanding: Provided, that the Peculiars belonging to any Archbishoprick or Bishoprick, though locally situated in another Diocese, shall continue subject to the Archbishop or Bishop to whom they belong, as well for the Purposes of this Act, as for all other Purposes of Ecclesiastical Jurisdiction in the Laws whatsoever.

Archbishop, Bishop, & Archdeacon, within whose respective Province, Diocese, or Jurisdiction, any Benefice, &c. exempt, shall be locally situate, shall have the same Powers as if such Benefice were not exempt; & where any such Benefice, &c. shall be situate in more than one Province, &c. or between the Limits of two, the Archbishop or Bishop to whose Cathedral the Parish Church shall be nearest, shall have the like Powers, &c. All Peculiars shall be subject to the Archbishop or Bishop to whom they belong.

XL. Provided always, and be it further enacted, That Nothing in this Act contained shall extend, or be construed to extend, to alter or affect his Majesty's Royal Prerogative in the granting of Dispensations for Non-residence upon Benefices, as the same now exists by Law; nor to affect any Privileges of Clerks retained in his Majesty's Service under the Statute passed in the ninth Year of EDWARD the Second, intituled, *Clerks in the King's Service shall be discharged of their Residence, but shall be corrected by their Ordinary.*

Act shall not affect his Majesty's Prerogative in granting Dispensations, nor Clerks retained in his Service under 9 Edw. II. c. 3.

XLI. 'And, to the Intent to avoid all Doubts,' be it enacted, That no Archbishop or Bishop, having or who shall have any Dignity, Prebend, Benefice, Donative, or Perpetual Cure, shall, by Reason of Non-residence upon the same, be subject or liable to any Penalties or Forfeitures.

No Archbishop or Bishop shall be liable to the Penalties for Non residence.

XLII. Provided also, and be it further enacted, That no Forfeiture or Penalty shall be incurred under or by Virtue of this Statute for any Act of Non-residence committed prior to the first Day of *January*, One Thousand Eight Hundred and Four.

No Penalty for Non residence prior to January 1, 1804;

XLIII. Provided also, That no Penalty for farming shall be incurred by any Spiritual Person, under this or any other Statute, till the fifth Day of *April*, One Thousand Eight Hundred and Four.

nor for farming till April 5, 1804.

No. 28. 43 Geo. III. c. 84.

Act not to extend beyond England.

XLIV. Provided also, That no Provision in this Act contained shall extend or be construed to extend beyond that Part of the United Kingdom of *Great Britain* and *Ireland* called *England*.

If any Execution shall have been sued out between July 7, 1803, and the passing this Act, the Judge may direct the Repayment of so much of Penalties and Costs levied as exceeds what the Defendant would have been liable to under this Act.

XLV. Provided also, and be it further enacted, That in Case in any Action, Bill, Plaint, or Information, in which any Verdict shall have been obtained prior to the passing of this Act, any Execution shall have been sued out at any Time between the seventh Day of *July*, One Thousand Eight Hundred and Three, and the Day after the passing of this Act, it shall be lawful, after the passing of this Act, for any Judge of the Court in which such Action, Bill, Plaint, or Information shall be depending, upon Application of the Defendant, to direct by any Rule or Order the Plaintiff or Plaintiffs who shall have levied under any such Execution, to repay to the Defendant so much of the Penalties, Forfeitures, and Costs, levied by such Execution, as the Sums so levied shall exceed the Amount of what such Defendant would have been liable to pay in Penalty, Forfeiture, and Costs, or any of them, as the Case might be if no Execution had been sued out against such Defendant, and such Defendant had applied under this Act to such Judge to discontinue to Proceedings in such Action, Bill, Plaint, and Information before Execution taken out; and such Judge and Defendant respectively shall have full Power to enforce Obedience to such Order or Rule, in like Manner as Obedience to any Order or Rule of such Court, can or may be enforced.

No. 29.

43 Geo. III. c. 107.—An Act for effectuating certain Parts of an Act, passed in the second and third Years of the Reign of her late Majesty Queen ANNE, intituled, *An Act for the making more effectual her Majesty's gracious Intentions for the Augmentation of the Maintenance of the Poor Clergy, by enabling her Majesty to grant in Perpetuity, the Revenues of the First Fruits and Tenths; and also for enabling any other Persons to make Grants for the same Purpose*, so far as the same relate to Deeds and Wills made for granting and bequeathing Lands, Tenements, Hereditaments, Goods, and Chattels, to the Governors of the Bounty of Queen ANNE, for the Purposes in the said Act mentioned, and for enlarging the Powers of the said Governors. [27*th July*, 1803.]

43 Geo. III. c. 107.

2 & 3 Anne, c. 11, sec. 4, by which Persons were empowered to give Estates, &c. in their own Right to the Governors of the Bounty of Queen Anne, towards the Augmentation of the Maintenance of the Clergy.

'WHEREAS by an Act, made in the second and third Years of ' the Reign of her late Majesty Queen ANNE, intituled, ' *An Act for the making more effectual her Majesty's gracious Intentions for the Augmentation of the Maintenance of the Poor Clergy, by enabling her Majesty to grant, in Perpetuity, the Revenues of the First Fruits and Tenths; and also for enabling any other Persons to make Grants for the same Purpose*; after reciting, ' amongst other Things, that for the Encouragement of such well-' disposed Persons as should, by her Majesty's Royal Example, be ' moved to contribute to so pious and charitable a Purpose, and that ' such their Charity might be rightly applied, it was amongst other

No 29.
43 Geo III c. 107.

'Things enacted, that all and every Person and Persons having in his 'or their own Right any Estate or Interest, in Possession, Reversion, 'or Contingency, of or in any Lands, Tenements, or Hereditaments, 'or any Property of or in any Goods or Chattels, should have full 'Power, Licence, and Authority, at his, her, and their Will and 'Pleasure, by Deed enrolled in such Manner and within such Time 'as is directed by the Statute made in the twenty-seventh Year of the 'Reign of King HENRY the Eighth, for Enrolment of Bargains and 'Sales, or by his, her, or their last Will or Testament in Writing, 'duly executed according to Law, to give and grant to and vest in 'the Corporation thereby authorised, and since erected under the 'Name of *The Governors of the Bounty of Queen* ANNE, and their 'Successors, all such his, her, or their Estate, Interest, or Property 'in such Lands, Tenements, and Hereditaments, Goods, and Chat-'tels, or any Part or Parts thereof, for and towards the Augmentation 'of the Maintenance of such Ministers officiating in such Church or 'Chapel where the Liturgy and Rites of the said Church were or 'should be so used or observed, as in the same Act were mentioned, 'and having no settled competent Provision belonging to the same, 'and to be for that Purpose applied according to the Will of the said 'Benefactor, in and by such Deed enrolled, or by such Will or 'Testament executed as aforesaid expressed, and in Default of such 'Direction, Limitation, or Appointment, in such Manner as by her 'Majesty's Letters Patent should be directed or appointed as aforesaid; 'and such Corporation and their Successors, should have full Capacity 'and Ability to purchase, receive, take, hold, and enjoy for the 'Purposes aforesaid, from such Persons as should be so charitably 'disposed to give the same, any Manors, Lands, Tenements, Goods, 'or Chattels, without any Licence or Writ of *Ad quod damnum*, the 'Statute of Mortmain or any other Statute or Law to the contrary 'notwithstanding: And it was by the same Act provided, that that 'Act, or any Thing therein contained, shall not extend to enable any 'Person or Persons being within Age, or of non-sane Memory, or 'Women Covert without their Husbands, to make any such Gift, 'Grant, or Alienation, any Thing in that Act contained to the con-'trary in anywise notwithstanding: And whereas the Beneficial Effect 'and Operation of the said Act have been considerably obstructed and 'retarded by an Act, passed in the ninth Year of the Reign of his 'late Majesty King GEORGE the Second, intituled, *An Act to restrain 'the Disposition of Lands, whereby the same become unalienable*;' for Remedy thereof be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, 'and by the Authority of the same, That so much of the said Act of her late Majesty Queen ANNE, as is herein recited, shall be and remain in full Force and Effect, the said Act of his late Majesty King GEORGE the Second, or any other Act or Law to the contrary notwithstanding.

shall remain in Force, notwithstanding Mortmain Act, 9 Geo II c. 36.

II. 'And whereas by an Act, passed in the first Year of the Reign 'of his late Majesty King GEORGE the First, intituled, *An Act for 'making more effectual her late Majesty's gracious Intentions for 'augmenting the Maintenance of the Poor Clergy*, it was amongst 'other Things enacted, that it should be lawful, with the Concurrence 'of the said Governors of the Bounty of Queen ANNE, and the In-'cumbent, Patron, and Ordinary, of any augmented Living or Cure 'to exchange all or any Part of the Estate settled for the Augmenta-'tion thereof, for any other Estate in Lands or Tythes of equal or 'greater Value, to be conveyed to the same Uses;' be it also enacted, That the said Power shall be, and the same is hereby extended to all

Power of exchanging Lands, &c under 1 G. I. c. 10. (sec. 13) extended to all the Lands, &c of augmented Livings.

No. 29.
43 Geo III. c. 107.

the Messuages, Buildings, and Lands, belonging to every such augmented Living or Cure.

Where there is no suitable Parsonage House the Governors may provide one.

III. And be it further enacted, That where a Living shall have been or shall be augmented by the said Governors, either by way of Lot or Benefaction, and there is no Parsonage House suitable for the Residence of the Minister, it shall and may be lawful for the said Governors, and they are hereby empowered, from Time to Time, in order to promote the Residence of the Clergy on their Benefices, to apply and dispose of the Money appropriated for such Augmentation, and remaining in their Hands, or any Part thereof, in such Manner as they shall deem most adviseable, in or towards the building, rebuilding, or purchasing a House, and other proper Erections within the Parish, convenient and suitable for the Residence of the Minister thereof, which House shall for ever thereafter be deemed the Parsonage House appertaining to such Living, to all Intents and Purposes whatsoever; any Thing in any Acts or the Rules of the said Governors contained to the contrary notwithstanding.

No. 30.

43 Geo. III. c. 108.—An Act to promote the building, repairing, or otherwise providing of Churches and Chapels, and of Houses for the Residence of Ministers, and the providing of Church Yards and Glebes.

[27th *July*, 1803.]

43 Geo III. c. 108.

'WHEREAS a sufficient Number of Churches and Chapels for 'the Celebration of Divine Service, according to the Rites 'and Ceremonies of the United Church of *England* and *Ireland*, and 'of Mansion Houses with competent Glebes for the Residence of 'Ministers officiating in such Churches and Chapels, is necessary to'wards the Promotion of Religion and Morality: And whereas the 'same are either wholly wanting or materially deficient in many Parts 'of *England* and *Ireland*: And whereas many well disposed Persons 'would be desirous of contributing towards the Supply of such De'fects, if they were enabled so to do in the Manner herein-after 'directed:' May it therefore please your Majesty, that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all and every Person and Persons having in his or their own Right any Estate or Interest in Possession, Reversion, or Contingency, of or in any Lands or Tenements, or of any Property of or in any Goods or Chattels, shall have full Power, Licence, and Authority, at his and their Will and Pleasure, by Deed inrolled in such Manner, and within such Time, as is directed in *England* by the Statute made in the twenty-seventh Year of the Reign of King HENRY the Eighth, and in *Ireland* by the Statute made in the tenth Year of the Reign of King CHARLES the First, for Inrolment of Bargains and Sales, or by his, her, or their last Will or Testament in Writing duly executed according to Law, such Deed, or such Will or Testament, being duly executed three Calendar Months at least before the Death of such Grantor or Testator, including the Days of the Execution and Death, to give and grant to and vest in any Person or Persons, or Body Politic or Corporate, and their Heirs and Successors, respectively, all such his, her, or their Estate, Interest, or Property in such Lands or Tenements, not exceeding five Acres, or

Persons possessed in their own Right may, by Deed enrolled (in England under Stat. 27 H. VIII. c. 16, and in Ireland under Stat. 10 C. st 2, c. 1, sec. 17.) or by Will executed 3 Months before their Decease, give Lands not exceeding five Acres, or Goods and Chattels not exceeding 500l. for the Purposes of this Act.

No. 30.
43 Geo. III. c. 108.

Goods and Chattels, or any Part or Parts thereof, not exceeding in Value five hundred Pounds, for or towards the erecting, rebuilding, or repairing, purchasing, or providing any Church or Chapel where the Liturgy and Rites of the said United Church are or shall be used or observed, or any Mansion House for the Residence of any Minister of the said United Church, officiating or to officiate in any such Church or Chapel, or of any Out-buildings, Offices, Church Yard, or Glebe for the same respectively, and to be for those Purposes applied, according to the Will of the said Benefactor in and by such Deed enrolled, or by such Will or Testament executed as aforesaid expressed, the Consent and Approbation of the Ordinary being first obtained, and in Default of such Direction, Limitation, or Appointment, in such Manner as shall be directed and appointed by the Patron and Ordinary, with the Consent and Approbation of the Parson, Vicar, or other Incumbent; and such Person and Persons, Bodies Politic and Corporate, and their Heirs and Successors respectively, shall have full Capacity and Ability to purchase, receive, take, hold, and enjoy, for the Purposes aforesaid, as well from such Persons as shall be so charitably disposed to give the same, as from all other Persons as shall be willing to sell or alienate to such Person or Persons, Bodies Politic or Corporate, any Lands or Tenements, Goods, or Chattels, without any Licence or Writ of *Ad quod damnum,* the Statute of Mortmain, or any other Statute or Law to the contrary notwithstanding: Provided always, that this Act or any Thing therein contained, shall not extend to enable any Person or Persons being within Age, or of non-sane Memory, nor Women Covert without their Husbands, to make any such Gift, Grant, or Alienation; any Thing in this Act contained to the contrary in anywise notwithstanding.

No[illegible] extend to Infants, F[illegible] Covert, &c.

II. Provided also, and it is hereby further enacted, That no more than one such Gift or Devise shall be made by any one Person, and that if any such Gift or Devise as aforesaid shall happen to exceed five Acres in Lands or Tenements, or the Value of five hundred Pounds in Goods and Chattels, every such Gift or Devise shall be good and valid to the Extent aforesaid; and it shall be lawful for the Lord Chancellor for the Time being, on Petition, to make Order for reducing every such Gift or Devise to and within the said Limits, and for allotting such specific five Acres, and if Occasion should require, such specific Goods and Chattels as in his Judgment shall be most convenient, and to make such further Order touching the Premises as to him shall appear just and reasonable.

Only one such Gift [illegible] be made [illegible] where it exceeds [illegible]

III. Provided also, That no Glebe containing upwards of fifty Acres shall be augmented with more than one Acre under or by Virtue of this Act, but that the Excess, if any, given or devised for the Purpose of such Augmentation, shall be reduced in Manner aforesaid, by the said Lord Chancellor, and such Order thereupon shall be by him made as herein-before is directed in the Case of an Excess beyond five Acres.

No Glebe upwards of 50 Acres shall be augmented with more than 1 Acre.

IV. 'And whereas it often happens that small Plots of Land 'held in Mortmain lie convenient to be annexed to some Church or 'Chapel, or House of Residence, as aforesaid, or to some Church-'Yard, or Curtilage thereto belonging, or convenient to be employed 'as the Scite of some such Church or Chapel, or House to be here-'after erected, and for the necessary and commodious Use and 'Enjoyment thereof, and that they might be so employed to the 'Advantage of the Public, and without Detriment to the Proprietors 'thereof, if they were enabled to give and grant the same for the 'Purposes aforesaid;' be it therefore further enacted, That it shall be lawful for every Body Politick or Corporate, Sole or Aggregate, by Deed inrolled as aforesaid, with or without Confirmation, as the Law

Plots of Land not exceeding 1 Acre, held in Mortmain, may be granted either by Exchange or Benefaction for being annexed to a Church, &c.

No. 30. 43 Geo III c. 1 may require, to give and grant, either by Way of Exchange or Benefaction, any such small Plot of Land not exceeding one Acre, to any Person or Persons, Body Politick or Corporate, his and their Heirs and Successors respectively, to be held, used, and applied for the Purposes aforesaid; and such last-mentioned Person and Persons, Bodies Politick and Corporate, and their Heirs and Successors respectively, shall have full Capacity and Ability, with Consent of the Incumbent, Patron, and Ordinary, to take, hold, and enjoy such small Plot of Land for the Purposes aforesaid, without any Licence or Writ of *Ad quod damnum*, the Statute of Mortmain, or any other Act or Law to the contrary notwithstanding.

Accommod shall be prov f all Pers sorting to Ch &c. V. Provided also, and it is hereby further enacted and declared, That in every Parochial Church or Chapel hereafter to be erected ample Provision shall be made for the decent and suitable Accommodation of all Persons, of what Rank or Degree soever, who may be entitled to resort to the same, and whose Circumstances may render them unable to pay for such Accommodations.

Former devising, saved. VI. Provided also, That Nothing in this Act contained shall be construed to take away or abridge any Right of giving or devising which already exists in any Person whatsoever.

No. 31.

43 Geo. III. c. 109.—An Act to rectify a Mistake in an Act, made in this present Session of Parliament, intituled, *An Act to amend the Laws relating to Spiritual Persons holding of Farms; and for enforcing the Residence of Spiritual Persons on their Benefices in* England; and to remove a Doubt respecting the Title of the Statute of the twenty-first Year of King Henry the Eighth therein mentioned. [27*th July*, 1803.]

43 G III c. 10, c. 21, (sec 4) 'WHEREAS by an Act, made in this present Session of Parliament, intituled, *An Act to amend the Laws relating to* '*Spiritual Persons holding of Farms; and for enforcing the Residence of Spiritual Persons on their Benefices in* England; and 'reciting as therein is recited, it was amongst other Things enacted 'in the Words following; that is to say, "And it shall also be lawful 'for any Spiritual Person having or holding any Donative, Perpetual 'Curacy, or Parochial Chapelry, not having any sufficient or convenient Glebe or Demesne Lands annexed to, or in Right of, or by 'Reason of his Benefice or Cure or Chapelry, or for any Stipendiary 'Curate, or any unbeneficed Spiritual Person, with the Consent or 'Approbation of the Bishop of the Diocese, signified in Writing, to 'take to farm to himself, or to any Person or Persons to his Use for 'a limited Term of Years, any Farm or Farms, Lands, Tenements, 'or Hereditaments, that may, under all the Circumstances, appear to 'such Bishop proper to be taken, held, or occupied by any such 'Spiritual Person, for the Convenience and Accommodation of his 'Household and Hospitality only, without being subject or liable to 'any Pains, Penalties, or Forfeitures, under the said first-recited Act 'or any other Act, by reason thereof, any Thing therein contained to 'the contrary notwithstanding:" And whereas after the Words "any 'Spiritual Person having or holding any," and before the Word '"Donative" in the said Provisions, the Word "Benefice" was by 'Mistake omitted to be there inserted:' For rectifying the said Mis-

Provision of recited Act, where Word "Benefice" was by Mistake omitted, extended to Spiritual Persons having any Benefice.

No. 31.
43 G. III. c. 10[6]

take, may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from the Day on which the said Act passed, the said Provision, and every Matter therein contained, shall extend, and be construed to extend, to every Spiritual Person having or holding any Benefice in like Manner as if the Word "Benefice" had been inserted after the Word "any" and before the Word "Donative" in the said Provision in the said Act.

Clauses in said Act shall have Effect as if "Benefice" had been inserted.

II. And be it further enacted, That every Clause, Matter, and Provision contained in the said Act, which has or in Construction thereof can or ought to have relation to the said Provision, shall be construed in such and the like Manner, and shall be and be taken to be of the same Effect as if the Word "Benefice" had been inserted as aforesaid in the said Provision.

Doubt respecting the Title of 21 H. VIII. c. 13. (as recited in c. 84 this Session) moved.

III. And be it also enacted, That the said Act, passed in the twenty-first Year of the Reign of King HENRY the Eighth, whereby it is among other Things enacted in the Words or to the Effect following: "That as well every Spiritual Person now being promoted to any Archdeaconry, Deanry, or Dignity, in any Monastery or Cathedral Church or other Church, Conventual or Collegiate, or being beneficed with any Parsonage or Vicarage, as all and every Spiritual Person and Persons which hereafter shall be promoted to any of the said Dignities or Benefices with any Parsonage or Vicarage, from the Feast of *Saint Michael* the Archangel next coming, shall be personally resident and abiding in, at, and upon his said Dignity, Prebend, or Benefice, or at one of them at the least; and in case that any such Spiritual Person at any Time after the said Feast keep not Residence at one of his said Dignities, Prebends, or Benefices as is aforesaid, but absent himself wilfully by the Space of one Month together, or by the Space of two Months, to be accounted at several Times in any one Year, and make his Residence and Abiding in any other Places by such Time, that then he shall forfeit for every such Default ten Pounds Sterling, the one Half thereof to the King our Sovereign Lord, and the other Half of the same to the Party that will sue for the same in any of the King's Courts by original Writ of Debt, Bill, Plaint, or Information, in which Action and Suit the Defendant shall not wage his Law, nor have any Essoign or Protection allowed," shall, from the Day on which the said recited Act of this present Session of Parliament passed, be deemed and taken to all Intents and Purposes in the Construction of the said Act of the present Session, to be the Act of the twenty-first Year of the Reign of King HENRY the Eighth, intended to be recited in the said Act of the present Session of Parliament, and which is in such Act of the present Session mentioned to be intituled, *Spiritual Persons abridged from having Pluralities of Livings, and from taking of Ferms, &c.* notwithstanding any Mistake which there may be in the said Act of the present Session of Parliament, in setting forth the Title of the said Act of the twenty-first Year of the Reign of King HENRY the Eighth, wherein and whereby it is enacted as aforesaid.

No. 32.

44 Geo. III. c. 43.—An Act to enforce the due Observance of the Canons and Rubrick respecting the Ages of Persons to be admitted into the sacred Orders of Deacon and Priest.

[3d. May, 1804.]

44 Geo. III. c. 43.

'WHEAREAS by the Canons of the Churches heretofore of 'England and Ireland, it is ordained, ordered, and directed, 'that no Bishop shall admit any Person into the sacred Order of a 'Deacon who is not twenty-three Years old, nor to be a Priest except 'he be twenty-four Years compleat. And whereas by the Prefaces to 'the Forms or Ordination of Priests and Deacons, established and 'used by Authority of several Acts of the Parliaments of *England* 'and *Ireland* respectively, it is directed that none shall be admitted 'Deacon except he be twenty-three Years of Age, unless he have a 'Faculty, and that every Man which is to be admitted a Priest shall 'be full twenty-four Years old: And whereas, in that Part of the 'United Kingdom called *Ireland,* the aforesaid Rule respecting the 'Ages of Persons desiring to be admitted into Holy Orders has been 'sometimes disregarded and rendered of no Effect, to the great Scan-'dal and Detriment of the Church, and to the Prejudice of Religion: 'For the better Prevention whereof for the future, and also in order 'that one certain and undoubted Rule and Course of Practice may 'hereafter prevail and be observed in this Respect in *England* and '*Ireland,*' be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, no Person shall be admitted a Deacon before he shall have attained the Age of three and twenty Years compleat, and that no Person shall be admitted a Priest before he shall have attained the Age of four and twenty Years compleat: And in Case any Person shall, from and after the passing of this Act, be admitted a Deacon before he shall have attained the Age of four and twenty Years compleat, or be admitted a Priest before he shall have attained the Age of four and twenty Years compleat, that then and in every such Case the Admission of every such Person as Deacon or Priest respectively, shall be merely void in Law as if such Admission had not been made, and the Person so admitted shall be wholly incapable of having, holding, or enjoying, or being admitted to any Parsonage, Vicarage, Benefice, or other Ecclesiastical Promotion or Dignity whatsoever, in Virtue of such his Admission as Deacon or Priest respectively, or of any Qualification derived or supposed to be derived therefrom: Provided always, that no Title to confer or present by Lapse shall accrue by any Avoidance or Deprivation, *ipso facto,* by Virtue of this Statute, but after six Months' Notice of such Avoidance or Deprivation given by the Ordinary to the Patron.

None shall be admitted Deacon before 23, nor Priest before 24, [illegible] of holding a Benefice, but Title by Lapse shall not accrue without Notice.

II. And be it further enacted, That Nothing herein contained shall extend, or be construed to extend, to take away any Right of granting Faculties heretofore lawfully exercised, and which now be lawfully exercised by the Archbishop of *Canterbury* or the Archbishop of *Armagh.*

Saving of Right of granting Faculties.

No. 33.

45 Geo. III. c. 101.—An Act to repeal so much of an Act passed in the Ninth Year of the Reign of His late Majesty King GEORGE the Second, intituled, *An Act to restrain the Disposition of Lands, whereby the same become unalienable*, as restrains Colleges within the two Universities of *Oxford* and *Cambridge* from purchasing or holding Advowsons, except as therein is provided. [*10th July*, 1805.]

45 G. III. c. 101.

9 G. 2, c. 36, § 5. restraining Colleges from purchasing or holding Advowsons repealed.

'WHEREAS it is amongst other Things provided by an Act, 'passed in the Ninth Year of the Reign of His late Majesty 'King GEORGE the Second, intituled, *An Act to restrain the Disposition of Lands, whereby the same become unalienable*, that no College 'or House of Learning in either of the Two Universities within that 'Part of the United Kingdom called *England*, which doth or shall 'hold or enjoy so many Advowsons of Ecclesiastical Benefices as are 'or shall be equal in Number to One Moiety of the Fellows, or Persons 'usually styled or reputed as Fellows, or where there are or shall be 'no Fellows, or Persons usually styled or reputed as Fellows, to One 'Moiety of the Students upon the Foundation whereof any such College 'or House of Learning doth or may by the present Constitution of such 'College or House of Learning consist, shall, from and after the Twenty-fourth Day of *June*, One Thousand Seven Hundred and Thirty-six, 'be capable of purchasing, acquiring, receiving, taking, holding, or 'enjoying, any other Advowsons of Ecclesiastical Benefices by any 'Means whatever, the Advowsons of such Ecclesiastical Benefices as 'are annexed to or given for the Benefit or better Support of the 'Headships of any of the said Colleges or Houses of Learning, not 'being computed in the Number of Advowsons hereby limited: 'And whereas the above Restriction has been found by Experience to 'operate to the Prejudice of such Colleges or Houses of Learning, by 'rendering the Succession too slow: And whereas the Removal of 'such Restriction will be for the Benefit of such Colleges or Houses 'of Learning, and of the said Universities, and will tend to the Promotion of Learning, and to the providing a better Supply of fit and 'competent Parochial Ministers;' be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same, That so much of the said Statute as is herein-before recited shall be and the same is hereby repealed.

No. 34.

51 Geo. III. c. 115.—An Act for amending the Act Forty third GEORGE Third, to promote the building, repairing or otherwise providing the Churches and Chapels, and of Houses for the Residence of Ministers, and the providing of Church Yards and Glebes. [*26th June*, 1811.]

51 G. III. c. 115.

43 G. III. c. 108. sec. 1.

'WHEREAS by an Act passed in the Forty third Year of His 'present Majesty's Reign, intituled, *An Act to promote the 'building, repairing, or otherwise providing of Churches and Chapels, 'and of Houses for the Residence of Ministers, and the providing of*

No. 34. 51 G. III. c 115.

'Church Yards and Glebes: it was enacted, that every Person and 'Persons having in his or their own Right any Estate or Interest in 'Possession, Reversion or Contingency of or in any Lands or Tene-'ments, or of any Property of or in any Goods or Chattels, should 'have full Power, Licence and Authority, by Deed inrolled, in such 'Manner, and within such Time as is directed in *England* by the 'Statute made in the Twenty seventh Year of the Reign of King 'HENRY the Eighth, and in *Ireland* by the Statute made in the 'Tenth Year of the Reign of King CHARLES the First, for Inrolment 'of Bargains and Sales; or by his, her or their last Will or Testa-'ment in Writing, duly executed according to Law, such Deed or 'such Will or Testament being duly executed Three Calendar Months 'at least before the Death of such Grantor or Testator, including the 'Days of the Execution and Death, to give and grant to and vest in 'any Person or Persons, or Body Politic or Corporate, and their Heirs 'and Successors respectively, all such his, her or their Estate, Interest 'or Property in such Lands or Tenements not exceeding Five Acres, 'or Goods and Chattels, or any Part or Parts thereof, not exceeding 'in Value Five Hundred Pounds, for or towards the erecting, re-'building, repairing, purchasing or providing any Church or Chapel 'where the Liturgy and Rights of the said United Church are or shall 'be used or observed, or any Mansion House for the Residence of any 'Minister of the said United Church, officiating or to officiate in any 'such Church or Chapel, or of any Outbuildings, Offices, Church 'Yard or Glebe for the same respectively, and to be for those Pur-'poses applied according to the Will of the said Benefactor in and by 'such Deed inrolled, or by such Will or Testament executed as afore-'said expressed (the Consent and Approbation of the Ordinary being 'first obtained), and in Default of such Direction, Limitation or Ap-'pointment, in such Manner as shall be directed and appointed by 'the Patron and Ordinary, with the Consent and Approbation of the 'Parson, Vicar or other Incumbent; and such Person and Persons, 'Bodies Politic and Corporate, and their Heirs and Successors respect-'ively, should have full Capacity and Ability to purchase, receive, 'take, hold and enjoy for the Purposes aforesaid, as well from such 'Persons as shall be so charitably disposed to give the same, as from 'all other Persons as shall be willing to sell or alien to such Person or 'Persons, Bodies Politic or Corporate, any Lands or Tenements, 'Goods or Chattels, without any Licence or Writ of *Ad quod damnum*: 'And whereas Doubts have arisen whether the Powers and Provisions 'of the said Act will enable His Majesty to make any such Grant for 'the Purposes before mentioned: And whereas it is expedient that the 'Powers of the said Act should be extended for that Purpose;' Be it therefore enacted by the King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the King's Most Excellent Majesty, his Heirs and Successors, shall have full Power, Licence and Authority, by Deed or Writing under the Great Seal, or under the Seal of his Duchy and County Palatine of *Lancaster*, to give and grant and vest in any Person or Persons, Bodies Politic or Corporate, and their Heirs and Successors respectively, all such his, her or their Estate, Interest or Property in any Lands or Tenements within the Survey of the Court of Exche-quer, or of the Duchy of *Lancaster*, for or towards the erecting, re-building, repairing, purchasing or providing any Church or Chapel where the Liturgy and Rites of the said United Church are or shall be used or observed, or any Mansion House for the Residence of any Minister of the said United Church officiating or to officiate in any such Church or Chapel, or of any Outbuildings, Offices, Church

His Majesty may vest Lands in any Person for building or repairing Church or Chapel, or House for Residence of Minister.

Yard or Glebe for the same respectively, and to be for those Purposes applied in and by such Deed as aforesaid expressed, the Consent and Approbation of the Ordinary being first obtained, and such Person and Persons, Bodies Politic and Corporate, and their Heirs and Successors respectively, shall have full Capacity and Ability to receive, take, hold and enjoy for the Purposes aforesaid, any Lands or Tenements notwithstanding the Statute of Mortmain, or the Act of the First Year of Her late Majesty Queen Anne, intituled, *An Act for the better Support of her Majesty's Household, and the Honour and Dignity of the Crown*, or any other Act or Acts, or other Impediment or Disability whatsoever: Provided always, that nothing in this Act contained shall extend or be construed to extend to enable his Majesty, his Heirs and Successors, to grant more than Five Acres in any one Grant for any of the Purposes aforesaid, or to alter or amend any of the Provisions of the said Act of the Forty third Year of his present Majesty, which are not herein-before specially named and mentioned.

No. 34.
51 G. III c. 115.

9 G. II. c. 36.
1 Ann. Stat. 1. c. 7.

No Grant to exceed Five Acres.

II. And be it further enacted, by the Authority aforesaid, That it shall be lawful for any Person or Persons, Bodies Politic or Corporate, seized of or entitled to the entire and absolute Fee Simple of any Manor, by Deed under the Hand and Seal or Hands and Seals of any such Person or Persons, and under the Seal or Seals of any such Body or Bodies Politic or Corporate, and inrolled in the Court of Chancery, to grant to the Rector, Vicar or other Minister of any Parish Church and his Successors, or to the Curate or Minister of any Chapel and his Successors, any Parcel or Parcels of Land not exceeding in the Whole the Quantity of Five Statute Acres, Parcel of the Waste of such Manor, and lying within the Parish where such Church or Chapel shall be, or shall be intended to be erected, or within any Extra-parochial District wherein any such Chapel shall be, or shall be intended to be erected, for the Purpose of erecting thereon or enlarging any such Church or Chapel, or for a Church Yard or Burying Ground, or enlarging a Church Yard or Burying Ground for such Parish or Extra-parochial Place, or for a Glebe for the Rector, Vicar, Curate, or other Minister of any such Church or Chapel, to erect a Mansion House or other Buildings thereon, or make other Conveniences for the Residence of such Rector, Vicar, Curate or other Minister, freed and absolutely discharged of and from all Rights of Common thereon, and any Statute prohibiting any Alienation in Mortmain, or other Statute, Law or Custom to the contrary notwithstanding: Provided always, that no Grant whatsoever shall be made of any Land whatsoever, for any of the Purposes authorized by this Act, unless the Church or Chapel for the Benefit whereof or of the Minister whereof such Grant shall be made shall be a Parochial Church or Chapel for the Service of the United Church of *England* and *Ireland*, duly authorized by Law, or a Church or Chapel duly consecrated for the Service of such Church, or erected, or to be erected for such Purpose by and with the Licence and Consent of the Ordinary of the Diocese wherein the same shall be.

Any Person having Fee Simple of Manor may grant Five Acres of Waste for Ecclesiastical Purposes.

Grants restricted to Parochial Church or Chapels.

No. 35.

52 Geo. III. c. 146.—An Act for the better regulating and preserving Parish and other Registers of Births, Baptisms, Marriages and Burials in *England*.

[28th *July*, 1812.]

52 G. III. c. 146.

'WHEREAS the amending the Manner and Form of keeping and of preserving Registers of Baptisms, Marriages and 'Burials, of his Majesty's Subjects in the several Parishes and Places 'in *England*, will greatly facilitate the Proof of Pedigrees of Persons 'claiming to be entitled to Real or Personal Estates, and be otherwise 'of great public Benefit and Advantage;' Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the Thirty-first Day of *December* One Thousand Eight Hundred and Twelve, Registers of Public and Private Baptisms, Marriages and Burials, solemnized according to the Rites of the United Church of *England* and *Ireland*, within all Parishes or Chapelries in *England*, whether subject to the Ordinary or Peculiar, or other Jurisdiction, shall be made and kept by the Rector, Vicar, Curate or Officiating Minister of every Parish, (or of any Chapelry where the Ceremonies of Baptism, Marriage and Burial have been usually and may according to Law be performed) for the Time being, in Books of Parchment, or of good and durable Paper, to be provided by his Majesty's Printer as Occasion may require, at the Expence of the respective Parishes or Chapelries; whereon shall be printed, upon each Side of every Leaf, the Heads of Information herein required to be entered in the Registers of Baptisms, Marriages and Burials respectively, and every such Entry shall be numbered progressively from the Beginning to the End of each Book, the First Entry to be distinguished by Number One; and every such Entry shall be divided from the Entry next following by a printed Line, according to the Forms contained in the Schedules (A.) (B.) (C.) hereto annexed; and every Page of every such Book shall be numbered with progressive Numbers, the first Page being marked with the Number 1. in the Middle of the upper Part of such Page, and every subsequent Page being marked in like Manner with progressive Numbers, from Number 1. to the End of the Book.

Officiating Ministers to keep Registers of Public and Private Baptisms of Marriages and of Burials.

Parishes to provide suitable Books for that Purpose.

II. And, for better ensuring the Regularity and Uniformity of such Register Books, be it further enacted, That a printed Copy of this Act, together with one Book so prepared as aforesaid, and adapted to the Form of the Register of Baptisms prescribed in the Schedule (A.) to this Act annexed; and also one other Book so prepared as aforesaid, and adapted to the Form prescribed for the Register of Marriages in the Schedule (B.) to this Act annexed; and also one other Book so prepared as aforesaid, and adapted to the Form prescribed for the Register of Burials in the Schedule (C.) to this Act annexed, shall, as soon as conveniently may be after the passing of this Act, be provided and transmitted by His Majesty's Printer to the Officiating Ministers of the several Parishes and Chapelries in *England* respectively, who are hereby required to use and apply the same in and to the Purposes of this Act; and such Books respectively shall be proportioned to the Population of the several Parishes and Chapelries, according to the last Returns of such Population made under the Authority of Parliament; and other Books of like Form and Quality shall for the like Purposes be furnished from Time to Time

King's Printer to transmit to each Parish a printed Copy of Act, and Register Books adapted to Forms prescribed.

[illegible]

No 35.
52 G. III. c. 146.

by the Churchwardens or Chapelwardens of every Parish or Chapelry, at the Expence of the said Parish or Chapelry, whenever they shall be required by the Rector, Vicar, Curate, or Officiating Minister to provide the same; and all such Books shall be of Paper, unless required to be of Parchment by such Churchwardens or Chapelwardens respectively.

Registers in separate Register Books.

III. And be it further enacted, That such Registers shall be kept in such separate Books aforesaid, and that every such Rector, Vicar, Curate, or Officiating Minister, shall as soon as possible after the Solemnization of every Baptism, whether private or public, or Burial respectively, record and enter in a fair and legible Handwriting, in the proper Register Book to be provided, made and kept as aforesaid, the several Particulars described in the several Schedules hereinbefore mentioned, and sign the same; and in no Case, unless prevented by Sickness, or other unavoidable Impediment, later than within Seven Days after the Ceremony of any such Baptism or Burial shall have taken Place.

Certificate of Baptism, &c. when performed in other place than Parish Church, &c. Schedule (D.) Entry of Baptism, &c. made accordingly.

IV. And be it further enacted, That whenever the Ceremony of Baptism or Burial shall be performed in any other Place than the Parish Church or Church Yard of any Parish (or the Chapel or Chapel Yard of any Chapelry, providing its own distinct Registers) and such Ceremony shall be performed by any Minister not being the Rector, Vicar, Minister or Curate of such Parish or Chapelry, the Minister who shall perform such Ceremony of Baptism or Burial shall, on the same or on the next Day, transmit to the Rector, Vicar, or other Minister of such Parish or Chapelry, or his Curate, a Certificate of such Baptism or Burial in the Form contained in the Schedule (D.) to this Act annexed, and the Rector, Vicar, Minister or Curate of such Parish or Chapelry, shall thereupon enter such Baptism or Burial according to such Certificate in the Book kept pursuant to this Act for such Purpose; and shall add to such Entry the following Words, "According to the Certificate of the Reverend "transmitted to me on the Day of ."

Register Books kept in Custody of Officiating Minister, in Iron Chest, provided at Expence of Parish.

V. And be it further enacted, That the several Books wherein such Entries shall respectively be made, and all Register Books heretofore in Use, shall be deemed to belong to every such Parish or Chapelry respectively, and shall be kept by and remain in the Power and Custody of the Rector, Vicar, Curate, or other Officiating Minister of each respective Parish or Chapelry as aforesaid, and shall be by him safely and securely kept in a dry well-painted Iron Chest, to be provided and repaired as Occasion may require, at the Expence of the Parish or Chapelry, and which said Chest containing the said Books shall be constantly kept locked in some dry, safe, and secure Place within the usual Place of Residence of such Rector, Vicar, Curate or other Officiating Minister, if resident within the Parish or Chapelry, or in the Parish Church or Chapel; and the said Books shall not, nor shall any of them be taken or removed from or out of the said Chest, at any Time or for any Cause whatever, except for the Purpose of making such Entries therein as aforesaid, or for the Inspection of Persons desirous to make search therein, or to obtain Copies from or out of the same, or to be produced as Evidence in some Court of Law or Equity, or to be inspected as to the State and Condition thereof, or for some of the Purposes of this Act; and that immediatelely after making such respective Entries, or producing the said Books respectively for the Purposes aforesaid, the said Books shall forthwith again be safely and securely deposited in the said Chest.

Annual Copies of Registers made; and verified Officiating Minister.

VI. And be it further enacted, That at the Expiration of Two Months after the Thirty-first Day of *December*, One Thousand Eight Hundred and Thirteen, and at the Expiration of Two Months after

No. 36. 52 G. III. c. 146.

the End of every subsequent Year, fair Copies of all the Entries of the several Baptisms, Marriages and Burials, which shall have been solemnized or shall have taken place within the Year preceding, shall be made by the Rector, Vicar, Curate or other resident or Officiating Minister, (or by the Churchwardens, Chapelwardens, Clerk, or other Person duly appointed for the Purpose, under and by the Direction of such Rector, Vicar, Curate or other resident or Officiating Minister) on Parchment, in the same Form as prescribed in the Schedules hereunto annexed (to be provided by the respective Parishes); and the contents of such Copies shall be verified and signed in the Form following, by the Rector, Vicar, Curate or Officiating Minister of the Parish or Chapelry to which such respective Register Book shall appertain:

'I *A. B.* Rector [*or, as the Case may be*] of the Parish of *C.* [*or*, of the Chapelry of *D.*] in the County of *E.* do hereby solemnly declare, That the several Writings hereto annexed, purporting to be Copies of the several Entries contained in the several Register Books of Baptisms, Marriages and Burials, of the Parish or Chapelry aforesaid, from the Day of to the Day of are true Copies of all the several Entries in the said several Register Books respectively from the said Day of to the said Day of ; and that no other Entry during such Period is contained in any of such Books respectively, are truly made according to the Best of my Knowledge and Belief.

'Signed *A. B.*'

Which Declaration shall be fairly written, without any Stamp, on the said Copy immediately after the last Entry therein; and the Signature to such Declaration shall be attested by the Churchwardens or Chapelwardens, or One of them, of the Parish or Chapelry to which such Register Books shall belong.

Annual Copies of Register Books transmitted to Registrar of Diocese.

VII. And be it further enacted, That Copies of the said Register Books, verified and attested as aforesaid, shall, whether such Parish or Chapelry shall be subject to the Ordinary, Peculiar or other Jurisdiction, be transmitted by such Churchwardens or Chapelwardens, after they, or One of them, shall have signed the same, by the Post, to the Registrars of each Diocese in *England* within which the Church or Chapel shall be situated, on or before the First Day of *June* One Thousand Eight Hundred and Fourteen, and on or before the First Day of *June* in every subsequent Year.

Registrars to make Reports to Bishops, whether Copies have been sent in.

VIII. And be it further enacted, That the Registrar of every Diocese in *England* shall, on or before the First Day of *July* One Thousand Eight Hundred and Fourteen, and on or before the First Day of *July* in every subsequent Year, make a Report to the Bishop of such Diocese, whether the Copies of the Registers of the Baptisms, Marriages and Burials, in the several Parishes and Places within such Diocese have been sent to such Registrar, in the Manner and within the Time herein required; and in the Event of any Failure of the Transmission of the Copies of the Registers as herein required, by the Churchwardens and Chapelwardens of any Parish or Chapelry in *England*, the Registrar shall state the Default of the Parish or Chapelry, specially in his Report to the Bishop.

Officiating Minister neglecting to verify Copies of Register Books, Churchwardens to certify Default.

IX. And be it further enacted, That in case the Rector, Vicar or other officiating Minister or Curate of any Parish or Chapelry shall neglect or refuse to verify and sign such Copies of such several Register Books, and such Declaration as aforesaid, so that the Churchwardens or Chapelwardens shall not be able to transmit the same, as required by this Act, such Churchwardens or Chapelwardens shall, within the

Time required by this Act for the Transmission thereof, certify such Default to the Registrar of the Diocese within which such Parish or Chapelry shall be, who shall specially state the same in his Report to the Bishop of such Diocese.

No. 35.
52 G. III. c. 146.

X. And, for the obtaining of Returns and Registers of Baptisms and Burials in Extra-parochial Places in *England*, where there is no Church or Chapel, be it further enacted, That in all cases of the Baptism of any Child, or the Burial of any Person in any Extra-parochial Place in *England*, according to the Rites of the Established Church, where there is no Church or Chapel, it shall be lawful for the officiating Minister, within One Month after such Baptism or Burial, to deliver to the Rector, Vicar or Curate of such Parish immediately adjoining to the Place in which such Baptism or Burial shall take place, as the Ordinary shall direct, a Memorandum of such Baptism or Burial, signed by such Parent of the Child baptized, or a Memorandum of such Burial, signed by the Person employed about the same, together with Two of the Persons attending the same, according as the Nature of the Case may respectively require; and every such Memorandum respectively shall contain all such Particulars as are hereinbefore required; and every such Memorandum delivered to the Rector, Vicar or Curate of any such adjoining Parish or Chapelry, shall be entered in the Register of his Parish, and form a Part thereof.

Places where no Church, &c. Memorandum of Baptisms, &c. delivered to Officiating Minister adjoining Parish.

XI. And be it further enacted, That the Superscription upon all Letters and Packets containing the Copies of such Parish or other Registers, to be transmitted by the Post to the several Offices of the said Registrars as aforesaid, shall be indorsed and signed by the Churchwardens or Chapelwardens of every respective Parish and Chapelry in *England*, in the Form contained in Schedule (E.); and that all such Letters and Packets shall be carried and conveyed by Means of his Majesty's Post-Office to, and be delivered at the Offices of the said Registrars, without Postage or other Charge being paid or payable for the same.

Letters, &c. containing Annual Copies of Register Books free of Postage.

XII. And be it further enacted, That when and so often as the Copies of the said Register Books of Baptisms, Marriages, and Burials as aforesaid, and also the said Lists of Births, Baptisms, Marriages, or Burials as aforesaid, shall be transmitted to the Office of the said Registrars respectively, as aforesaid, pursuant to the Directions hereinbefore contained for that Purpose, the said Registrars shall respectively cause all the said Books and Lists to be safely and securely deposited, kept and preserved from Damage or Destruction by Fire or otherwise, and to be carefully arranged for the Purpose of being resorted to as Occasion may require; and the said Registrars respectively shall also cause correct alphabetical Lists to be made and kept in Books suitable to the Purpose, of the Names of all Persons and Places mentioned in such Books and Lists as shall have been transmitted to the said Registrars respectively, which alphabetical Lists and Books, and also the Copies of Registers and Lists so transmitted to the said Registrars as aforesaid, shall be open to public Search at all reasonable Times on Payment of the usual Fees.

Annual Copies of Register Books when transmitted to Registrars, kept from Damage.

Alphabetical List.

'XIII. And whereas in many Dioceses the Places wherein the 'Copies of the Parochial Registers of Baptisms, Marriages, and 'Burials, as well as the original Wills proved within the same 'respectively are kept, are insufficient for their being preserved with 'due Care; for which a Remedy should be applied in those Dioceses 'where it shall be found necessary;' Be it further enacted, That, in Order to a due Examination thereof, the Bishop, together with the *Custodes Rotulorum* of the several Counties within each Diocese, and the Chancellor thereof, shall, before the First Day of *February*, One Thousand Eight Hundred and Thirteen, cause a careful Survey to be made of the several Places in which the Parochial Registers, and the

Report to Privy Council on or before 1st of March 1813 respecting proper Places for Preservation of Copies of Register Books, as well as Original Wills in each Diocese; and for Remuneration of Registrars' Officers.

No. 35. 52 G. III. c. 146. Wills proved within the Diocese, are kept; and shall make a Report to his Majesty's most Honourable Privy Council, of the State of the same, on or before the First Day of *March* following, setting forth in each Case whether the Buildings are in all Respects fit and proper for the Preservation of Papers of the above Description, as well with Respect to Space as to Security from Fire, and to Protection from Damp, and if not, at what probable Expence they can be made so; and where the Instruments and Papers before mentioned are kept in Dwelling-houses or other Places, which cannot be made fit and secure for the due Preservation thereof then and in such Case the Persons before named shall enquire and report in like Manner at what Expence proper Buildings may be provided, and in what Places, so as to have one Place within each Diocese for the due Preservation of all such Registers and Wills; together with their Opinion upon the most suitable Mode of remunerating the Officers employed in each Registry, for their additional Trouble and Expence in carrying the Provisions of this Act into Execution. (1)

False Entries, or false Copies of Entries, or altering Register Book.

XIV. And be it further enacted, That if any Person shall knowingly and wilfully insert, or cause, or permit to be inserted in any such Register Book of such Baptisms, Burials, or Marriages as aforesaid, or in any such Copy of any such Register so directed to be transmitted to the Registrars as aforesaid, any false Entry of any Matter or Thing relating to any Baptism, Burial, or Marriage, or shall falsely make, alter, forge, or counterfeit, or cause or procure, or wilfully permit to be falsely made, altered, forged, or counterfeited, any Part of any such Register, List, or Declaration, or of any such Copy of any such Register; or shall wilfully destroy, deface, or injure, or cause or procure, or permit to be destroyed, defaced, or injured, any such Register Book, or any Part thereof; or shall knowingly and wilfully sign, or certify any Copy of any such Register hereby required to be transmitted as aforesaid, which shall be false in any Part thereof, knowing the same to be false; every Person so offending, and being thereof lawfully convicted, shall be deemed and adjudged to be guilty of Felony, and shall be transported for the Term of Fourteen Years.

Transportation.

Persons committing accidental Errors not affected, if duly corrected according to Truth of Case.

XV. Provided always, and be it enacted, That no Rector, Vicar, Curate, or Officiating Minister of any Parish or Chapel, who shall discover any Error to have been committed in the Form or Substance of the Entry in the Register Book of any such Baptism, Burial, or Marriage, respectively by him solemnized, shall be liable to all or any of the Penalties herein-mentioned, (2) if he shall within One Calendar Month after the Discovery of such Error, in the Presence of the Parent or Parents of the Child whose Baptism may have been entered in such Register, or of the Parties married, or in the Presence of Two Persons who shall have attended at any Burial, or in Case of the Death or Absence of the respective Parties aforesaid, then in the Presence of the Churchwardens or Chapelwardens, (who shall respectively attest the same) alter and correct the Entry which shall have been found erroneous, according to the Truth of the Case, by Entry in the Margin of the Book wherein such erroneous Entry shall have been made, without any Alteration or Obliteration of the original Entry, and shall sign such Entry in the Margin, and add to such Signature the Day of the Month and Year when such Correction shall be made: Provided also, that in the fair Copy of the Registers respectively which shall be transmitted to the Registrars of the

(1.) No farther Legislative Provisions have been yet made in pursuance of this Clause.—(Feb. 1815.)

(2.) There are no Penalties, except the Felonies for wilful Acts in the preceding Section. See Note to Sec. 18.

No. 35.
52 G. III. c. 146.

Dioceses, the said Rector, Vicar, Curate, or Officiating Minister shall certify the Alterations so made by him as aforesaid.

Fees heretofore payable

Proviso for.

XVI. Provided always, That Nothing in this Act contained shall in any Manner diminish or increase the Fees heretofore payable or of Right due to any Minister for the Performance of any of the beforementioned Duties, or to any Minister or Registrar, for giving Copies of such Registrations, but that all due legal and accustomed Fees on such Occasions, and all Powers and Remedies for Recovery thereof, shall be and remain as though this Act had not been made.

Copy of Register Books not subject to Stamp Duty.

XVII. Provided also, and be it enacted, That no Duplicate or Copy of any Register of Baptism, Marriage, or Burial, made under the Directions and for the Purposes of this Act, shall be chargeable with any Stamp Duty thereon; any Act now in Force to the contrary thereof in any wise notwithstanding.

Application of Penalties

XVIII. And be it further enacted, That One Half of the Amount of all Fines or Penalties to be levied in pursuance of this Act shall go to the Person who shall inform or sue for the same; and the Remainder of such Fines as shall be imposed on any Churchwarden or Chapelwarden shall go to the Poor of the Parish or Place for which such Churchwarden or Chapelwarden shall serve; and the Remainder of such Fines as shall be imposed on any Rector, Vicar, Minister or Curate or Registrar, shall be paid and applied to such Charitable Purposes, in the County within which the Parish or Place shall be, as shall be appointed and directed by the Bishop of the Diocese. (3.)

List of extant Register Books transmitted to Registrar before first of June, 1813.

XIX. And be it further enacted, That the Rector, Vicar, Curate, or Officiating Minister of every Parish and Chapelry in *England*, whether subject to the Ordinary, Peculiar or other Jurisdiction, shall transmit to the Registrar of the Diocese in which the Parish or Chapelry shall be situated, before the First Day of *June*, One Thousand Eight Hundred and Thirteen, a List of all Registers which now are in such Parish or Chapelry respectively, stating the Periods at which they respectively commence and terminate, the Periods (if any) for which they are deficient, and the Places where they are deposited.

Act to extend to Churches and Chapels not Parochial.

XX. And be it further enacted, That all and every the Provisions in this Act shall extend, so far as Circumstances will permit, to Cathedral and Collegiate Churches, and Chapels of Colleges or Hospitals, and the Burying Grounds belonging thereto; and to the Ministers who shall officiate in such Cathedral or Collegiate Churches, and Chapels of Colleges or Hospitals, and Burying Grounds respectively, and shall baptize, marry, or bury any Person or Persons, although such Cathedral or Collegiate Churches or Chapels of Colleges or Hospitals, or the Burying Grounds belonging thereto, may not be parochial, or the Ministers officiating therein may not be, as such, parochial Ministers, and there shall be no Churchwarden or Churchwardens thereof; and in all such Cases, the Books hereinbefore directed to be provided, shall be provided at the expence of the Body having Right to appoint the Officiating Minister in every such Cathedral or Collegiate Church or Chapel of a College or Hospital; and Copies thereof shall be transmitted to the Registrar of the Diocese within which such Cathedral or Collegiate Church or Chapel of a College or Hospital shall be, by the Officiating Minister of such Church, in like Manner as is herein directed with Respect to parochial Ministers, and shall be attested by Two of the Officers of such Church, College, or Hospital, as the Copies of parochial Registers are herein directed to be attested by Churchwardens: Provided always, that Nothing in this contained shall extend to repeal any Provision

Marriage Act, 26 Geo. II. c. 33. Proviso for.

(3.) This Section affords a singular Instance of Inadvertance in the Composition of Acts of Parliament, there being no Fines or Penalties to which the Provision can be applied.

No. 35. 59 G. III. c. 146. contained in an Act passed in the Twenty-sixth Year of the Reign of his late Majesty King George the Second, intitled, *An Act for better preventing Clandestine Marriages.* (4.)

(4.) It would be desirable to make some Provision for the authentic Registration of Births, Deaths, and Marriages, which, by Reason of Dissent from the Established Church, are not included in the Purview of this Act.—The Duty formerly imposed upon Baptism, &c. was in this Respect useful, although on other Accounts properly repealed.—There are some very judicious Provisions respecting Registry in the Code Napoleon, under the Title "Acts of Civil State." Great Attention was paid to public Registers in France previous to the Revolution.

SCHEDULES to which this Act refers.

SCHEDULE (A.)

1.

BAPTISMS solemnized in the Parish of *St. A.* in the County of *B.* in the Year One Thousand Eight Hundred and Thirteen.

When Baptized.	Child's Christian Name.	Parents Name. Christian.	Parents Name. Surname.	Abode.	Quality, Trade, or Profession.	By whom the Ceremony was performed.
1813. *1st February* No. 1.	*John Son of*	*William* *Elizabeth*		*Lambeth.*		
3d March No. 2.	*Ann. Daughter of*	*Henry* *Martha.*		*Fulham.*		

SCHEDULE (B.)

1.

MARRIAGES solemnized in the Parish of *St. A.* in the County of *B.* in the Year One Thousand Eight Hundred and Thirteen.

A. B. of {*the* / *this*} Parish

and *C. D.* of {*the* / *this*} Parish

were married in this {*Church* / *Chapel*} by {*Banns* / *Licence*} with Consent of {*Parents* / *Guardians*}

this Day of in the Year

By me, *I. I.* {*Rector* / *Vicar* / *Curate*}

This Marriage was solemnized between us {*A. B.* / *C. D.*}

In the Presence of {*E. F.* / *G. H.*}

SCHEDULE (C.)

1.				
BURIALS in the Parish of *A.* in the County of *B.* in the Year One Thousand Eight Hundred and Thirteen.				
Name.	Abode.	When Buried.	Age.	By whom the Ceremony was performed
John Wilson No. 1.	*Duke Street, Westminster.*	1813. *1st May.*	62	

SCHEDULE (D.)

I do hereby certify, that I did on the Day of baptize according to the Rites of the United Church of *England* and *Ireland,* Son (*or Daughter*) of and his Wife, by the Name of

To the Rector [*or, as the Case may be*] of

I do hereby certify, that on the Day of *A. B.* of aged was buried in [*stating the Place of Burial,*] and that the Ceremony of Burial was performed according to the Rites of the United Church of *England* and *Ireland,* by me,

To the Rector [*or, as the Case may be*] of

SCHEDULE (E.)

To the Registrar of the Diocese of
at

A. B. } *C. D.* } Churchwardens (*or* Chapelwardens) of the Parish (*or* Chapelry) of [*or such other Description as the Case shall require.*]

No. 36.

53 Geo. III. c. 149.—An Act for the further Support and Maintenance of Stipendiary Curates.

[20th *July*, 1813.]

53 Geo. III. c. 149. 'WHEREAS an Act passed in the Twelfth Year of the Reign of her Majesty, Queen ANNE, intituled *An Act for the*
12 Anne, Stat. 2. c. 1. '*better Maintenance of Curates within the Church of* England, *and for preventing any Ecclesiastical Persons from buying the next Avoidance of any Church Preferment*: And whereas another Act
36 Geo. 3. c. 83 'passed in the Thirty-sixth Year of the Reign of his present Majesty, intituled *An Act for the further Support and Maintenance of Curates within the Church of* England, *and for making certain Regulations respecting the Appointment of such Curates, and the Admission of Persons to Cures augmented by Queen* ANNE'S *Bounty,*
Canon, Jac. I. 1603. '*with respect to the Avoidance of other Benefices*: And whereas by a Canon or Ecclesiastical Constitution made in the Year of our Lord One Thousand Six Hundred and Three, in the Reign of his Majesty King JAMES the First, (1) it was provided, that no Curate should be permitted to serve in any Place without Examination and Admission of the Bishop of the Diocese, or Ordinary of the Place having Episcopal Jurisdiction, in Writing under his Hand and Seal, having respect to the Greatness of the Cure and Meetness of the Party; and that the said Curates and Ministers, if they remove from one Diocese to another, should not by any Means be admitted to serve without Testimony of the Bishop of the Diocese, or Ordinary of the Places as aforesaid whence they came, in Writing, of their Honesty, Ability and Conformity to the Ecclesiastical Laws of the Church of *England*; and that none should serve more than One Church or Chapel upon One Day, except that Chapel be a Member of the Parish Church, or united thereto, and unless the said Church or Chapel where such Minister should serve in Two Places be not able in the Judgment of the Bishop or Ordinary as aforesaid to maintain a Curate: And whereas the Provisions of the said Acts and Canon, and of the Laws in force with respect to Curates, have been found insufficient, and it is necessary that more effectual Provision should be made to secure a competent Maintenance to Curates, in order to insure the due and regular Performance of the Service of the Church of *England* in Parishes where Incumbents do not reside;' Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority
Non-resident Incumbents neglecting to appoint Curates. of the same, That every Incumbent of or Person holding any Benefice, Donative, Perpetual Curacy or Parochial Chapelry, who does not or shall not duly reside thereon (unless such Person shall do the Duty of the same, having a legal Exemption from Residence, or a Licence to reside out of the same, or to reside out of the Parsonage House or Vicarage House, or other usual House of Residence belonging to the same), and who shall, for the Period of Six Months after the passing of this Act, or after his Induction or Appointment, or after the Death or Removal of a former Curate, neglect to nominate a proper Curate,

(1.) "The Canons of James I. where they are not merely declaratory of the ancient Canon Law, but are introductory of new Regulations, do not bind the Laity; (Str. 1057.) whatever Regard the Clergy may think proper to pay them."—1 Bl. Com. 83.

to be licensed by the Bishop of the Diocese or Ordinary of the Place having Episcopal Jurisdictions, to serve his Church or Chapel, or who shall, for the Period of Three Months after the Death or Resignation of any Curate who has served his Church or Chapel, neglect to notify to the Bishop of the Diocese such Death or Resignation, shall forfeit and lose all the Benefit of any Dispensation or Exemption from Residence, or Licence for Non-residence, and be subject and liable to such and the like Penalties for Non-residence as if he had no such Dispensation, Exemption from Residence, or Licence for Non-residence; and in every case in which no Curate shall be nominated to the Bishop or Ordinary for the Purpose of being licensed by him within such Period as aforesaid, the Bishop or Ordinary is hereby authorized to appoint and licence a proper Curate, with such Salary as is by this Act allowed and directed, to serve the Church or Chapel of the Parish or Place in respect of which such Neglect or Default shall have occurred.

No. 36. 53 Geo III c. 149.

Penalty.

II. And be it further enacted, That it shall be lawful for the Bishop or Ordinary, and he is hereby required, subject to the several Provisions hereinafter contained, to appoint to every Curate so licensed, such sufficient Salary as is allowed and specified in this Act; and every Instrument of Licence to be granted as aforesaid shall contain and specify the Amount of the Salary allowed by the Bishop or Ordinary to the Curate, and such Licence, or any Copy of the Registry thereof made according to the Provisions of this Act, duly proved to be a true Copy, shall be Evidence of the Amount of the Salary so appointed to any Curate in all Courts of Law or Equity; and in case any Difference shall arise between any Rector or Vicar, or Person holding any Benefice, Donative, Perpetual Curacy or Parochial Chapelry, and his Curate, touching such Stipend or Allowance, or the Payment thereof, or of the Arrears thereof, the Bishop or Ordinary, on Complaint to him made, may and shall summarily hear and determine the same; and in case of wilful Neglect or Refusal to pay such Stipend, Salary or Allowance, or the Arrears thereof, shall be and is hereby empowered to sequester the Profits of the Benefice, Donative, Perpetual Curacy or Parochial Chapelry, for and until Payment of such Stipend or Allowance, or the Arrears thereof; and no such Licence shall be valid, or exempt any Incumbent, or Person holding any Benefice, Donative, Perpetual Curacy or Parochial Chapelry, from any of the Penalties of this Act, or of any other Act or Acts of Parliament, unless it shall contain and specify the Amount of the Stipend, Salary or Allowance to be paid to the Curate.

Bishops to appoint Salaries to Curates.

III. And be it further enacted, That it shall be lawful for the Bishop or Ordinary who shall grant any Licence to any Curate to serve any Church or Chapel, where the Rector or Vicar, or Person holding any Donative, Perpetual Curacy or Parochial Chapelry, is not resident for Four Months in each Year, to allot, if he shall think fit, for the Residence of such Curate, the Parsonage or Vicarage House, or usual House of Residence of the Person holding the Donative, Perpetual Curacy or Parochial Chapelry, if there shall be any such House of Residence in the Parish or Place, and the Offices and Gardens thereto belonging, or any Part or Parts thereof, during the Time of such Curate's serving the Cure, or during the Non-residence of such Rector or Vicar or Person; and the Licence shall specify whether the Curate is required to reside within the Parish or Place or not; and if the Curate is permitted by the Bishop or Ordinary granting the Licence to reside out of the Parish or Place, the Grounds upon which the Curate is so permitted to reside out of the Parish or Place, shall be specified in the said Licence; and the Distance of the Residence of such Curate from any Church or Chapel which he shall be be licensed to serve shall not exceed Five Statute Miles, except in

Curates may be directed to reside in Parsonage House in case of Non-residence of Incumbents.

No. 58.
36 G. III. c. 149.

cases of Necessity to be approved by the Bishop or Ordinary, and specified in the Licence.

Bishop may direct Curate to give up Possession of Parsonage.

IV. Provided also, and be it further enacted, That the Bishop or Ordinary shall have Power at any Time, upon Three Months Notice, by Writing under his Hand and Seal, to direct the said Curate to deliver up the said Parsonage or Vicarage House or usual House of Residence, and the Offices and Gardens thereto belonging, or any of them; and the said Curate shall peaceably deliver up the Possession of the said Premises allotted to him; and in case he shall refuse to do so, he shall forfeit or lose to the Rector or Vicar, all such Parts of his Stipend as shall then be unpaid or shall thereafter become due, and also the Sum of Fifty Pounds to such Rector or Vicar, and which shall be recoverable in an Action of Debt.

Penalty.

Rector, &c not to dispossess Curate of House, without Order of Bishop, who may sequester Profits of Living until Possession given.

V. Provided always, and be it further enacted, That it shall not be lawful for the Rector or Vicar, or other Person holding any Donative, Perpetual Curacy or Parochial Chapelry, in any case in which the Parsonage or Vicarage or usual House of Residence of the Person holding any Donative, Perpetual Curacy or Parochial Chapelry, shall have been assigned to the Curate as a Residence, to dispossess such Curate, or take possession thereof, without and until the Permission of the Bishop or Ordinary shall have been given in Writing for that Purpose; and it shall be lawful for the Bishop or Ordinary assigning any such House or Residence to any Curate, to sequester the Profits of the Benefice, Donative, Perpetual Curacy or Parochial Chapelry to which the House shall belong, in any case in which Possession shall not be given up to the Curate, pursuant to any such Assignment of Residence, and until such Possession shall be given: Provided also, that if any such Curate shall refuse to give up Possession of any such House, upon the Order of the Bishop or Ordinary for that Purpose, it shall be lawful for the Rector, Vicar or Person holding the Donative, Perpetual Curacy or Parochial Chapelry, to which any such House shall belong, to apply to any Justice of the Peace or Magistrate of the County, Riding, Province, City or Place, for a Warrant, for the taking Possession thereof; and the Justice of the Peace to whom any such Order of the Bishop or Ordinary for such Possession is produced shall and he is hereby required thereupon to give a Warrant for such Possession, and Possession may thereupon be taken of such House under such Warrant at any Time in the Day time, by entering the same by Force if necessary without any other Proceeding, by Ejectment or otherwise; any Thing in any Act or Acts of Parliament or Law or Laws to the contrary notwithstanding.

Licences and Revocations filed in Registry of Diocese.

VI. And be it further enacted, That every Bishop or Ordinary who shall grant or revoke any Licence to any Curate under this Act shall and he is hereby required to cause a Copy of such Licence or Revocation to be entered in the Registry of the Diocese within which the Benefice, Donative, Perpetual Curacy or Parochial Chapelry, in respect whereof any such Licence shall be granted or Revocation made shall be locally situate, and an Alphabetical List of such Licences and Revocations shall be made out by the Registrar of each Diocese, and entered in a Book, and kept for the Inspection of all Persons, except as hereinafter excepted; and a Copy of every such Licence and Revocation, with respect to any Benefice, Donative, Perpetual Curacy or Parochial Chapelry, shall be transmitted by the said Registrar to the Churchwardens or Chapelwardens of the [illegible] Township or Place to which the same relates, within One Month after the [illegible] such Licence or Revocation thereof, to be by them deposited [illegible] Parish Chest, except as hereinafter excepted; and every Registrar who [illegible] shall refuse or neglect or omit to make any such Entry, or to transmit any such Copy, shall forfeit for every such Offence or Neglect the Sum

No. 36.
53 G. III. c. 149.

of Five Pounds, to be recovered as any Penalty or Forfeiture may be recovered under the said recited Acts: Provided always, that such Registrar shall for every such Copy to be transmitted to such Churchwardens or Chapelwardens as aforesaid be entitled to a Fee of Ten Shillings and no more, and that such Fee shall be allowed in the Accounts of such Churchwardens or Chapelwardens, and no other Fee shall be taken by such Registrar in respect of the Execution of this Act.

Fee.

Salaries payable to Curates to be in Proportion to Value of Benefices.

VII. And be it further enacted, That in every case in which any Person shall be instituted or inducted to any Benefice, or nominated or appointed to any Donative, Perpetual Curacy or Parochial Chapelry, after the passing of this Act, and shall not duly reside thereon, unless such Person shall do the Duty of the same, having a legal Exemption from Residence, or a Licence to reside out of the same, or to reside out of the Parsonage or Vicarage or other usual House of Residence belonging to the same, the Bishop or Ordinary shall appoint for the Curate licensed to serve such Benefice, Donative, Perpetual Curacy, or Parochial Chapelry of such Non-resident Incumbent or Person as aforesaid in his Absence, such Salary, according to the Gross Annual Value of the Benefice, Donative, Perpetual Curacy or Parochial Chapelry, as is hereinafter next mentioned; that is to say, such Salary shall in no Case be less than Eighty Pounds *per Annum*, or than the said Annual Value of the Benefice, Donative, Perpetual Curacy or Parochial Chapelry, if the said Value shall not amount to Eighty Pounds *per Annnm*; and such Salary shall not be less than One Hundred Pounds *per Annum*, or than the whole Value as aforesaid, if the said Value shall not amount to One Hundred Pounds *per Annum*, in any Parish or Place where the Population, according to the Returns then last made in pursuance of any Act or Acts of Parliament, shall amount to or exceed Three Hundred Persons; and such Salary shall not be less than One Hundred and Twenty Pounds *per Annum*, or the whole Value as aforesaid, if the said Value shall not amount to One Hundred and Twenty Pounds *per Annum* in any Parish or Place where the Population shall appear as aforesaid to amount to or exceed Five Hundred Persons; and such Salary shall not be less than One Hundred and Fifty Pounds *per Annum* in any Parish or Place where the Population shall appear as aforesaid to amount to or exceed One Thousand Persons: Provided always, that the annual Value of all Benefices, Donatives, Perpetual Curacies or Parochial Chapelries, of which the said Value, estimated as is herein provided, does not amount to One Hundred and Fifty Pounds *per Annum*, shall be estimated from the Returns made by the Bishops of the several Dioceses to the Governors of Queen Anne's Bounty, in pursuance of an Address of the House of Lords, or from any future Returns which may be made by the said Bishops to the said Governors, respecting Parishes or Places in the actual Income of which it shall be made appear to the said Bishops that any considerable Variation has taken Place, either by Augmentations made by the said Governors or otherwise.

Proviso.

Where Curate's Salary is of Value of Benefice, it shall be liable to Charges affecting it.

VIII. Provided always, and be it further enacted, That in every Case in which such Bishop or Ordinary shall appoint for such Curate a Salary equal to the whole annual Value of such Benefice, Donative, Perpetual Curacy or Parochial Chapelry, such Salary shall be subject to all such and the like Charges and Outgoings as may legally affect the Value of such Benefice, Donative, Perpetual Curacy or Parochial Chapelry, and to any Loss or Diminution which may lessen such [illegible] without the wilful Default or Neglect of such Incumbent.

No. 36.
53 G. III. c. 149

How Salary adjusted where Curate is permitted to serve in adjoining Parish;

IX. Provided always, That in every case when the Bishop or Ordinary shall find it necessary or expedient, for the obtaining any proper Performance of Duties Ecclesiastical, to licence the Incumbent or Perpetual Curate of any Parish or Place to serve as Curate of any adjoining or other Parish or Place, it shall be lawful for such Bishop or Ordinary to appoint for such Incumbent or Perpetual Curate so licensed, a Salary less by a Sum not exceeding Thirty Pounds *per Annum* than the Salary which in the several cases hereinbefore mentioned the Bishop or Ordinary is respectively required by this Act to appoint; and in every case where the Bishop or Ordinary shall find it necessary or expedient as aforesaid to licence one and the same Person to serve as Curate for Two adjoining or other Parishes or Places, it shall be lawful for such Bishop or Ordinary to direct that during such Time as such Curate shall serve such Two Churches or Chapels, the Salary to be received by him for serving each of the said Churches or Chapels shall be less by a Sum not exceeding Thirty Pounds *per Annum* than the Salary which in the several cases hereinbefore mentioned the Bishop or Ordinary is required by this Act to appoint:

Proviso.

Provided always, that no such Salary shall in any case be less than Fifty Pounds *per Annum*, or than the whole Value of the said Benefice, Donative, Perpetual Curacy or Parochial Chapelry, which such Incumbent, Perpetual Curate or Curate, shall be licensed to serve if the said Value shall not amount to Fifty Pounds *per Annum*: Provided always, that no Incumbent, Perpetual Curate or Curate shall be licensed to serve as Curate in any Church or Chapel which is distant more than Five Statute Miles from any Church or Chapel already served by such Incumbent, Perpetual Curate or Curate, except in cases of Necessity to be approved by the Bishop or Ordinary, and specified in the Licence.

Smaller Salaries allowed to Curates in certain Cases.

X. Provided always, and be it further enacted, That in every case in which it shall be made out to the Satisfaction of the Bishop or Ordinary of any Diocese, that any Incumbent or Person holding any Benefice, Donative, Perpetual Curacy or Parochial Chapelry, is or has become Non-resident or incapable of performing the Duties thereof from Age, Sickness or other unavoidable Cause, and that from these or from any other special and peculiar Circumstances of the Case great Hardship and Inconvenience would arise if the full Amount of Salary specified in this Act should be allowed to the Curate, then, and in such case, it shall be lawful for such Bishop or Ordinary to assign to the Curate any such Salary, less than the said full Amount, as shall, under all the Circumstances, appear to him just and reasonable:

Proviso.

Provided always, that in the Licence granted in every such case it shall be stated that for special Reasons the Bishop or Ordinary hath not thought proper to assign to the Curate the full Amount of Salary allowed or required to be assigned by this Act: Provided also, that such special Reasons shall be entered fully and at large in a separate Book, to be kept for that Purpose, and to be deposited in the Registry of the Diocese, which Book shall not be open to Inspection unless with the Leave of the Bishop or Ordinary, or by other proper Authority.

Bishop to allow Rector, &c to deduct from Curate's Salary for Repairs to a limited Amount in certain Cases.

XI. Provided also, and be it further enacted, That it shall be lawful for the Bishop or Ordinary, upon the Application of any Rector, Vicar or Person holding any Donative, Perpetual Curacy or Parochial Chapelry, the whole Profit or Income of which shall have been allotted to the Curate, to allow such Rector, Vicar or other Person, to deduct and retain therefrom in any or each Year so much Money, not exceeding in any case One fourth Part of such Profits or Income or of the Salary assigned to the Curate, as shall have been been actually laid out and expended during the Year, in [illegible]pair of

the Parsonage, Vicarage or other House of Residence, in respect of which such Rector, Vicar or Person aforesaid, or his Executors, Administrators or Assigns, would be liable for Dilapidations to the Successor; and it shall also be lawful for the Bishop or Ordinary in like Manner to allow any Rector, Vicar or other Person aforesaid, having or holding any Benefice, Donative, Perpetual Curacy or Parochial Chapelry, the Profits or Income of which shall not exceed One hundred and Fifty Pounds *per Annum*, to deduct and retain from the Salary allotted to the Curate, in each or any Year, so much Money as shall have been actually laid out and expended in such Repairs as aforesaid, over and above the Amount of the Surplus remaining of such Profits or Income, after Payment of the Salary allotted to the Curate, so as that the Sum so deducted, after laying out such Surplus shall not in any Year exceed One fourth Part of the Salary allotted to the Curate

Curate to pay Taxes of the Parsonage House in certain Cases.

XII. Provided always, and be it further enacted, That in every case where the Bishop or Ordinary shall appoint, for the Curate licensed to serve any Benefice, Donative, Perpetual Curacy or Parochial Chapelry, a Salary not less than the whole gross annual Value of the same, and shall, in addition to such Salary, direct that such Curate shall reside in the Parsonage or Vicarage House, or usual House of Residence of the Person holding such Benefice, Donative, Perpetual Curacy or Parochial Chapelry, such Curate shall be liable, during his serving such Cure, to the same Taxes and Parochial Taxes in respect of such House, and the Appendages thereof, of which he may so be in Occupation, as if he had been instituted or inducted to the said Benefice, or nominated or appointed to the said Donative, Perpetual Curacy or Parochial Chapelry.

Where Benefice exceeds 400l. an Allowance may be made to Curate of 100l. per Annum. &c.

XIII. Provided always, and be it further enacted, That in any Parish or Place where it shall appear to the Satisfaction of the Bishop that the actual annual Income of such Benefice, Donative, Perpetual Curacy or Parochial Chapelry, clear of all Deductions, exceeds the Sum of Four hundred Pounds *per Annum*, it shall be lawful for the Bishop to assign to the Curate of such Parish or Place, being resident within the same, and serving no other Cure, a Salary or Allowance of One hundred Pounds *per Annum*, notwithstanding the Population of such Parish or Place may not appear as aforesaid to amount to Three hundred Persons; and that in any Parish or Place where the actual annual Income shall appear as aforesaid, and where the Population shall also appear as aforesaid to amount to or exceed Five hundred Persons, it shall be lawful for the Bishop to assign to the Curate of such Parish or Place, being resident within the same, and serving no other Cure, any larger Stipend or Allowance, so that the same shall not exceed by more than Fifty Pounds *per Annum* the Amount of the Stipend or Allowance hereinbefore respectively required to be assigned to such Curate.

[illegible]ot to empow[illegible] [illegible]ps to assi[illegible] Curates of Pe[illegible] [illegible] of this Act or of certain other Persons, any greater Stipend than before.

XIV. Provided always, and be it further enacted, That nothing in this Act contained shall authorize or empower any Bishop or Ordinary to assign to any Curate of any Person holding any Benefice, Donative or Perpetual Curacy or Parochial Chapelry, before the passing of this Act, upon any such Benefice, Donative, Perpetual Curacy or Parochial Chapelry, held by such Person before the passing of this Act, and on which such Person is or shall be Non-resident by Licence or Exemption, or to the Curate of any Person holding any Benefice, Donative, Perpetual Curacy or Parochial Chapelry, who shall duly reside thereupon, or who shall himself do the Duty of the same, having a legal Exemption from Residence or a Licence to reside out of the same, or to reside out of the Parsonage or Vicarage House, or other usual House of Residence belonging to the same, any greater

No. 36. 53 G. III. c. 149.

Stipend or Allowance for the Curate who shall be licensed to serve such Benefice, Donative, Perpetual Curacy or Parochial Chapelry, than is allowed by the Statutes in force before the passing of this Act, unless with the Consent of the Person holding such Benefice, Donative, Perpetual Curacy or Parochial Chapelry.

Agreements contrary to Act and to 36 Geo. III. c. 83, void.

XV. And be it further enacted, That all Agreements and Contracts made or to be made between Persons holding Benefices, Donatives, Perpetual Curacies or Parochial Chapelries, and their Curates, in Fraud or Derogation of the Provisions of this Act, or of the said Act of the Thirty-sixth Year of his present Majesty's Reign, and all Agreements and Contracts whereby any Curate shall undertake, or in any Manner bind himself to accept or be content with any Stipend or Salary less than that which shall be stated to be allowed in any Licence of such Curate, shall be void to all Intents and Purposes in the Law whatsoever, and shall not be set up, pleaded or given in Evidence in any Court of Law or Equity; and notwithstanding the Payment and Acceptance, in pursuance of any such Contract or Agreement, of any Sum less than the Sum specified in the Licence of such Curate, or any Receipt, Discharge or Acquittance, that may be given in cases of such Payment and Acceptance, the Curate or his personal Representatives, shall be and remain entitled to the full Amount of what shall remain unpaid of the Stipend, Salary or Allowance specified in his Licence; and the Payment of what shall so remain unpaid shall, together with Treble Costs of recovering the same, be enforced by the Bishop or Ordinary by Sequestration of the Profits of the Benefice, Donative, Perpetual Curacy or Parochial Chapelry; provided that no Sequestration shall, by virtue of this Act, affect the Profits of any Benefice, Donative, Perpetual Curacy or Parochial Chapelry, beyond the Time during which the Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, shall be held by the Person liable to make the Payments in respect of which such Profits shall be sequestered.

Treble Costs.

No Licence granted to serve more than Two Churches in one Day.

XVI. And be it further enacted, That no Licence or Licences shall, after the passing of this Act, be granted, except in the case hereinafter mentioned, to any Curate, to serve more than Two Churches in One Day, or Two Chapels, or One Church and One Chapel, in One Day; and every Licence granted to any Curate for any greater Number of Churches or Chapels shall be wholly void and of no Effect, both as to the Curate to whom the same shall be granted, and as to the Incumbent or Person to whom the Benefice, Donative, Perpetual Curacy or Chapelry† shall belong: Provided always, that where it shall appear to the Bishop or Ordinary of any Diocese, in any case in which a Curate shall before the passing of this Act have served more than Two Churches or Chapels, or in which, from the Nature of the Circumstances or the local Situation of the Churches or Chapels, and the Value of the Benefices, Donatives, Perpetual Curacies or Parochial Chapelries to which they belong, and in which the Provision of this Act cannot be enforced as to the assigning Salaries of Curates until the Death or Removal of the Persons holding such Benefices, Donatives, Perpetual Curacies or Parochial Chapelries, that the granting Licences to any Curate to serve Three Churches or Chapels not being distant from each other more than Four measured Miles, is necessary to the obtaining any proper Performance of Ecclesiastical Duties in any Parish or Place, it shall be lawful for the Bishop in such cases to grant Licences to any Curate to serve Three such Churches or Chapels; Provided always, that in every such case the Reasons for granting such Licences shall be stated by the Bishop in each of such Licences, and such Licences shall not be valid or effectual unless the Reasons for granting the same are in-

Proviso.

serted therein as aforesaid: And provided also, that the Residence of such Curate shall be so placed, that it shall not be necessary for him to travel more than Fifteen Miles in One Day for the Performance of the Duties to be performed at such Three Churches or Chapels.

No. 86. 53 G. III c. 149.

Curate serving in different Places in Absence of Incumbent interchangeably, what Salary to receive.

XVII. Provided also, and be it enacted, That if any Incumbent of Two or more Benefices, Donatives, Perpetual Curacies or Parochial Curacies† or Parochial Chapelries, residing *bona fide* in the different Proportions of each and every Year, upon the same respectively, shall employ a Curate from Time to Time upon such of the same from which he shall be absent during his own actual Residence upon the Other thereof, the Stipend or Salary to be assigned to such Curate shall not exceed a due Proportion of an Annual Salary calculated according to the Provisions of this Act, the Bishop having regard to the Greatness of the Cure, and to the Proportions of the Year during which such Curate shall have done or shall be engaged to do the Duty of such Benefices, Donatives, Perpetual Curacies or Parochial Chapelries respectively.

† Sic.

Incumbent applying for Licence for Non-residence to state what Salary he proposes to give to Curate.

XVIII. And be it further enacted, That every Person holding any Benefice, Donative, Perpetual Curacy or Parochial Chapelry, who shall apply to the Bishop or Ordinary of the Diocese for any Licence for Non-residence, shall state in his Application what Salary he proposes to give to his Curate, and whether the Curate proposes to reside or not to reside in the Parish, and if resident, whether in the Parsonage House, and if not resident in the Parish at what Distance therefrom, and at what Place, and whether such Curate serves any other Parish as Curate or Incumbent, or has any other Ecclesiastical Preferment, or holds any Donative, Perpetual Curacy or Parochial Chapelry, or officiates in any other Church or Chapel, and shall also state the gross Value of the Benefice, Donative, Perpetual Curacy or Parochial Chapelry, in respect of which he applies for a Licence not to reside, and it shall not be lawful for the Bishop or Ordinary to grant any such Licence, unless the Application shall contain a Statement of the several Particulars aforesaid; and all such Applications and Specifications shall be kept and filed by the Registrar of the Diocese in a separate Book, and preserved from public Inspection, and disclosed only in like Manner and in such Cases as is before directed as to the Copies of Licences wherein the full Salary allowed or required by this Act is not granted to Curates.

Statement of Particulars necessary to be given by Persons applying for a Licence for Non-residence.

XIX. And be it further enacted, That every Bishop or Ordinary to whom any Application shall be made for any Licence, for a Curate to serve for any Person exempt by Law from Residence in his Benefice, Donative, Perpetual Curacy or Parochial Chapelry, shall, before he shall grant such Licence, require of the Person for whom such Curate is to serve, a Statement of all the Particulars by this Act required to be stated by any Person applying for a Licence for Non-residence as aforesaid; and it shall not be lawful for any Bishop or Ordinary to grant a Licence to any Curate to serve the Church or Chapel of any Person exempt from Residence, until a Statement of all such Particulars as aforesaid shall have been delivered to him, and such Statement shall be kept and filed, and preserved from public Inspection, and disclosed only in like Manner and in such Cases as is before directed, as to Statements of Persons applying for Licences for Non-residence.

Act to extend to Benefices exempt as well as not exempt.

XX. And be it enacted, That this Act and the several Provisions herein contained shall extend, and be deemed and construed to extend, to all Benefices, Donatives, Perpetual Curacies and Parochial Chapelries, exempt as well as not exempt, and to all Peculiars; and it shall moreover be lawful for the Churchwardens or Chapelwardens of any Parish or Chapelry which shall be exempt or subject to any

No. 36.
53 G. III. c. 149.

peculiar Jurisdiction, from Time to Time to make Complaint to the Bishop in whose Diocese such Parish or Chapelry shall be locally situate, of Non-residence of the Incumbent and the Want of due Provision for the Cure, and, Proof being made of the Fact in such Manner as the Bishop or Ordinary shall direct, to the Satisfaction of the Bishop or Ordinary, who is hereby empowered to administer an Oath, if he shall think fit to require Proof upon Oath (and which Oath any Justice of the Peace shall also have Power to administer), it shall be lawful for the said Bishop or Ordinary to proceed to the Augmentation of the Curate's Salary, or Appointment of a Curate, under the Provisions of this Act.

Ecclesiastical Jurisdiction ascertained.

XXI. And be it further enacted, That where any Benefice, Donative, Perpetual Curacy or Parochial Chapelry, shall be locally situate within the Limits of more than one Province or Diocese, or between the Limits of Two or more Dioceses, or any of them, the Archbishop or Bishop to the Cathedral Church of whose Province or Diocese the Parish Church thereof shall be nearest in local Situation, shall have, use and exercise all the Authorities and Powers which such Archbishop or Bishop could or would have used or exercised if the same Benefice, Donative, Perpetual Curacy or Parochial Chapelry had been locally situate within his Province or Diocese; provided that the Peculiars belonging to any Archbishop or Bishop, though locally situate in another Diocese, shall continue subject to such Archbishop or Bishop to whom they belong, as well for the Purposes of this Act as for all other Purposes of Ecclesiastical Jurisdiction in the Law whatsoever.

Commission to administer Oaths not subject to Stamp Duty.

XXII. And be it further enacted, That no Commission issued by any Bishop or Ordinary to any Commissary or Commissaries appointed to administer the Oaths required to be taken by any Curate for the Purpose of any Licence, shall be subject to any Stamp Duty; any Thing contained in any Act or Acts of Parliament to the contrary notwithstanding.

Proviso for Powers of Archbishops and Bishops.

XXIII. Provided also, and be it further enacted, That it shall be lawful for every Archbishop and Bishop, summarily and without formal Process or Suit, to use and exercise all and every the Powers and Authorities, and to do all and every the Acts, Matters and Things which such Archbishop or Bishop can use, exercise or do, under or by Virtue of the Provisions of this Act.

Proviso for Powers of Bishops.

XXIV. And be it further enacted, That Nothing in this Act contained shall be deemed or taken to vary, prejudice, alter or affect, otherwise than is expressly provided, any Power, Right or Authority already vested in any Bishop, touching Curates or their Salaries, under or by Virtue of any Statute, Canon, Usage or otherwise howsoever.

Proviso for Celebration of Divine Service.

XXV. Provided always, and be it enacted, That Nothing in this Act contained shall extend or be construed to extend to repeal or alter the Provisions contained in any Act of Parliament, or any other Provision of Law for the due Celebration of Divine Service in any Church or Chapel; or for the Discharge of any other Duty of any Rector or Vicar, or Person holding any Donative, Perpetual Curacy or Parochial Chapelry, by himself or his Curate.

XXVI. And be it further enacted, That Nothing in this Act contained shall extend to that Part of the United Kingdom called *Ireland.*

No. 37.

54 Geo. III. c. 175.—An Act to explain and amend several Acts relating to Spiritual Persons holding of Farms, and for enforcing the Residence of such Persons on their Benefices, in *England*, for One Year, and from thence until Six Weeks after the Meeting of the then next Session of Parliament.* [30th *July*, 1814.]

WHEREAS an Act was passed in the Forty-third Year of the Reign of his present Majesty, intituled *An Act to amend the Laws relating to Spiritual Persons holding of Farms, and for enforcing the Residence of Spiritual Persons on their Benefices in* England: And whereas certain of the Provisions of the said Act have been found inconvenient; and it is expedient that the said Act be amended, and that further Provision be made for the better carrying into Execution the Purposes thereof: And whereas it is also expedient to amend certain Provisions contained in an Act, passed in the Twenty-first Year of the Reign of King HENRY the Eighth, intituled *Spiritual Persons abridged from taking Pluralities of Livings and from taking of Ferms*; and also in an Act passed in the last Session, intituled *An Act for the further Support and Maintenance of Stipendiary Curates*; be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That no Action of Debt, Bill, Plaint, or Information, against any Spiritual Person, for the Recovery of any Penalties or Forfeitures under or by Virtue of the said first recited Act, shall be commenced or filed in any of his Majesty's Courts of Record at *Westminster*, or the Court of Great Sessions in *Wales*, until the First Day of *May* after the Expiration of the Year in which any alleged Offence against the said Act shall have taken place.

(54 G. III. c. 175. 43 Geo. III. c. 84. 21 H. VIII. [illegible] III. c. 149. Actions for Penalties under first recited Act not to be commenced before 1st May after Expiration of the Year.)

II. And whereas it is expedient that the Archbishops and Bishops of their respective Dioceses should be further empowered to punish past Non-residence, as well as to compel Residence in future; be it enacted, That in all Cases in which any Spiritual Person shall have become subject to any Penalty or Forfeiture for any Non-residence, it shall be lawful for the Archbishop or Bishop within whose Diocese such Penalty or Forfeiture shall have arisen, to proceed against such Spiritual Person for such past Non-residence; and to levy the Penalties incurred thereby under the said first recited Act as amended by this Act, by Monition and Sequestration, and to direct the Application thereof in like Manner, and subject to the same Regulations, and with like Powers of remitting or ordering the Re-payment of any Part of such Penalties, as is directed or allowed in the said Act, in Cases of Non-compliance with any Order for Residence.

(Bishops empowered to punish past Non-residence.)

III. And be it further enacted, That every Archbishop or Bishop may levy any Costs, Charges, or Penalties by this Act imposed upon any Spiritual Person, subject to his Jurisdiction or locally situate therein, who shall under the Provisions of the said first recited Act or this Act become liable thereto, in the same Manner as any Costs may be levied upon any Spiritual Person by any Archbishop or Bishop

(Archbishops and Bishops may levy Penalties & Costs by Sequestration.)

* If this Act should be modified or continued, during the Session 55 Geo. III. it will be noticed in the Table of Contents.

No. 27. 4 Geo. III c. 170.

under the Provisions of the said Act, and may order the Application of such Penalties in such Manner as is by the said Act directed concerning any Money levied by Sequestration.

Penalties not levied by the Bishop, may be recovered by Action.

IV. And be it also enacted, That every Penanlty under the first reciting Act, or this Act, in respect of which no Proceeding shall have been had by Monition for the Recovery thereof, before the First Day of *May* after the same shall have been incurred, may be recovered and applied by Action or Suit, in like Manner as the Penalties for Non-residence are directed to be recovered and applied by any Action or Suit under the said first recited Act and this Act.

Persons may appeal as under the Act of 43 G. III. c. 84.

V. Provided always, and be it further enacted, That it shall be lawful for any Spiritual Person to appeal against any Proceedings had under the Provisions of this Act, in the same Manner as is directed in relation to any Appeal under the said first recited Act.

Penalties may be remitted.

VI. Provided always, and be it further enacted, That in every Case in which any Archbishop or Bishop shall think proper, under all the Circumstances thereof, after proceeding by Monition for the Recovery of any Penalty under the said first recited Act or under this Act, to remit the Whole or any Part of the said Penalty, such Archbishop shall forthwith transmit to his Majesty in Council, and such Bishop shall transmit to the Archbishop of the Province to which he belongs, a List of such Cases as have occurred in his or their respective Dioceses, specifying the Nature and special Circumstances of each Case, and the Reasons for the said Remission, in the same Manner as is directed in relation to the Licences for Non-residence granted in non-enumerated Cases, under the said first recited Act; and it shall thereupon be lawful for his Majesty in Council, or for the said Archbishop, as the Case may be, to allow or disallow such Remission in Whole or in Part, in the same Manner as the Allowance or Disallowance of the said Licences for Non-residence is provided for by the said Act; the Decision of the said Archbishop, with respect to Cases transmitted to him from any such Bishop, to be final.

Penalties not recoverable for more than One Year.

VII. And whereas Doubts have been entertained, whether Penalties and Forfeitures imposed by the said first recited Act might not be recovered for more than One Year, be it declared and enacted, That no Penalties or Forfeitures shall be recovered by any Proceeding or Action, other and further than those to which such Spiritual Persons may be liable under the Provisions of the said Act, for any Offence alleged to have been committed against the Provisions of the said Act or this Act during the Year ending on the Thirty-first Day of *December* immediately preceding the Commencement of such Proceeding or Action.

The Year for Purposes of this Act to commence 1st January, and end 31st December; and Licences, except for temporary Causes, to be granted accordingly.

VIII. And be it further enacted, That for all the Purposes of the said first recited Act and of this Act, the Year shall be deemed to commence on the First Day of *January*, and be reckoned therefrom to the Thirty-first Day of *December*, both inclusive; and all Licences granted under the said Act, other than such as shall be granted for Periods less than a Year, on account of Illness or other temporary Causes, shall be granted to commence and terminate at such respective Periods as aforesaid, for the Year or Years for which they shall be granted; save and except such as it may be necessary to grant for the Remainder of any Year after the Expiration of any Licence now subsisting.

Calendar Months to be taken for the Purposes of the Act.

IX. And be it further enacted, That for all the Purposes of the said first recited Act and of this Act, the Months therein named shall be taken to be Calendar Months; except in any Case in which any Month or Months are to be made up of different Periods less than a Month; and in every such Case Thirty Days shall be deemed a Month.

No. 36.
54 G. III. c. 175.

Repealing the Provision of former Act as to Persons neglecting to notify Cause of Exemption, and imposing a Penalty of 20l.

X. And be it further enacted, That so much of the said first recited Act as enacts, That any Person neglecting to notify any Reason of any Exemption from Residence, for which it is not necessary to obtain a Licence, shall not be deemed to be entitled to the Benefit of such Exemption, shall be and the same is hereby repealed; and from and after the passing of this Act, every Spiritual Person having lawful Cause of Exemption from Residence under the said Act, or any other Act, and being Non-resident, who shall neglect to make such Notification thereof, as in the said Act is directed, shall forfeit and pay for every such Offence the Sum of Twenty Pounds, to be levied by Sequestration, if not otherwise paid after Monition to pay the same, of the Profits of the Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, for which he shall claim Exemption from Residence, by the Archbishop or Bishop of the Diocese to whom the Notification ought to be made, to be applied as he may direct, to useful and charitable Purposes, with the like Power of remitting or ordering the Re-payment of any Part of such Penalties, as is directed or allowed in the said Act, in Cases of Non-compliance with an Order for Residence.

So much of 53 Geo. III. c. 149, as enacts that Incumbents neglecting to notify the Death of Curate shall lose his Exemption, repealed, and Penalty of 20l. imposed.

XI. And be it further enacted, That so much of an Act passed in the last Session of Parliament, intituled *An Act for the further Support and Maintenance of Stipendiary Curates*, as enacts, that every Incumbent of or Person holding any Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, who does not nor shall not duly reside thereon (except as therein excepted) and who shall, for the Period of Three Months after the Death or Resignation of any Curate who has served his Church or Chapel, neglect to notify to the Bishop of the Diocese such Death or Resignation, shall forfeit and lose all the Benefit of any Dispensation or Exemption from Residence, or Licence for Non-residence, and be subject and liable to such and the like Penalties for Non-residence, as if he had no such Dispensation, Exemption from Residence, or License for Non-residence, shall be and the same is hereby repealed; and from and after the passing of this Act, every such Person shall, for such neglect, forfeit and pay the Sum of Twenty Pounds, to be levied, applied, and remitted, in like Manner as is herein-before provided with respect to the Neglect of notifying Exemptions from Residence.

In cases of no House of Residence what should be deemed a Residency.

XII. And be it further enacted, That every Spiritual Person having any Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, and who shall not have, nor during any Part of his Incumbency have had any House of Residence thereon, and who shall have resided Nine Months in the Year within the Limits of his Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, shall not be liable to any Penalties on account of Non-residence, nor be obliged to take out any Licence therefore; but that the same shall be deemed a legal Residence to all the Intents and Purposes of the said first recited Act and this Act; and in all Returns made by the Bishops, Persons so residing shall be returned as Resident.

Houses purchased by Governors of Q. Anne's Bounty to be deemed Residences.

XIII. And whereas the Governors of Queen ANNE'S Bounty have in some Instances purchased, or may hereafter purchase Houses not situate within the Parishes for which they are purchased, but so contiguous as to be equally convenient and suitable for the Residence of the officiating Ministers thereof; be it enacted, That such Houses, having been previously approved by the Archbishop or Bishop, by Writing under his Hand, shall be deemed Parsonage Houses appertaining to such Livings, to all Intents and Purposes whatsoever.

[illegible]

No. 37.
34 G. III. c. 175.

Sinecure Rectories.

XIV. And be it further enacted, That in all Cases of Sinecure Rectories having Vicarages endowed, the Residence of the Vicar in the Rectory House shall be deemed a sufficient legal Residence, to all Intents and Purposes whatever.

Continuance of Act.

XV. And be it further enacted, That this Act shall continue and be in force for One Year, and from thence until Six Weeks after the Meeting of the then next Session of Parliament.

PART I. CLASS III.

MARRIAGE.

No. 1.

25 Henry VIII. c. 22.—An Act concerning the King's Succession. P.

The Succession of the King's Majesty.

' IN their most humble wise shewn unto your Majesty your most ' humble and obedient Subjects, the Lords Spiritual and Temporal ' and the Commons, in this present Parliament assembled, That ' since it is the natural Inclination of every Man, gladly and willingly ' to provide for the Surety of both his Title and Succession, although ' it touch only his private Cause, we therefore, most rightful and ' dreadful Sovereign Lord, reckon ourselves much more bound to ' beseech and instant your Highness (although we doubt not of your ' princely Heart and Wisdom, mixed with a natural Affection to the ' same) to foresee and provide for the perfect Surety of both you and ' of your most lawful Succession and Heirs, upon which dependeth ' all our Joy and Wealth, in whom also is united and knit the only ' merely true Inheritance and Title of this Realm, without any Con' tradiction; wherefore we your said most humble and obedient ' Subjects, in this present Parliament assembled, calling to our Re' membrance the great Divisions which in Times past have been in ' this Realm, by reason of several Titles pretended to the Imperial ' Crown of the same, which sometimes, and for the most Part ensued, ' by occasion of Ambiguity and Doubts, then not so perfectly de' clared, but that Men might upon froward Intents, expound them to ' every Man's sinister Appetite and Affection, after their Sense, con' trary to the right Legality of the Succession and Posterity of the law' ful Kings and Emperors of this Realm; whereof hath ensued great ' Effusion and Destruction of Man's Blood, as well of a great Number ' of the Nobles, as of other the Subjects, and especially Inheritors in ' the same; and the greatest Occasion thereof hath been, because ' no perfect and substantial Provision by Law hath been made within ' this Realm of itself, when Doubts and Questions have been moved ' and proponed, of the Certainty and Legality of the Succession and ' Posterity of the Crown; by reason whereof the Bishop of *Rome*, ' and See Apostolick, contrary to the great and inviolable Grants of ' Jurisdictions given by God immediately to Emperors, Kings and ' Princes, in Succession to their Heirs, hath presumed in Times past, ' to invest who should please them, to inherit in other Mens King' doms and Dominions, which Thing we your most humble Subjects, ' both Spiritual and Temporal, do utterly abhor and detest; and ' sometimes other foreign Princes and Potentates of sundry Degrees, ' minding rather Dissension and Discord to continue in the Realm, to ' the utter Desolation thereof, than Charity, Equity or Unity, have ' many Times supported wrong Titles, whereby they might the ' more easily and facily aspire to the Superiority of the same; the ' Continuance and Sufferance whereof deeply considered and pondered,

[The] several Ti[tle]s [to th]e Crown o[f the] Realm, and [n]ot establish[ing] the Succes[sion] thereof, hath [been] the Cause [of mu]ch mischief.

No. 1. 25 H. VIII. c. 22.

'were too dangerous and perilous to be suffered any longer within 'this Realm, and too much contrary to the Unity, Peace and Tranquillity of the same, being greatly reproachable and dishonourable to 'the whole Realm.'

II. [The Marriage between the King and the Lady Katherine shall be adjudged void, and the Separation good.]

[The Lady Katherine shall be called Dowager to Prince Arthur, and not Queen.]

[The Marriage between the King and his Wife Queen Anne shall be taken for good, and consonant to God's Law.]

Marriage within the Degrees prohibited by God's Law.

'III. And furthermore, since many Inconveniences have fallen, 'as well within this Realm as in others, by reason of marrying within 'the Degrees of Marriage prohibited by God's Laws, that is to say, 'the Son to marry the Mother, or the Stepmother, the Brother the 'Sister, the Father his Son's Daughter, or his Daughter's Daughter, 'or the Son to marry the Daughter of his Father procreate and born 'by his Stepmother, or the Son to marry his Aunt, being his Father's 'or Mother's Sister, or to marry his Uncle's Wife, or the Father to 'marry his Son's Wife, or the Brother to marry his Brother's Wife, 'or any Man to marry his Wife's Daughter, or his Wife's Son's 'Daughter, or his Wife's Daughter's Daughter, or his Wife's Sister; 'which Marriages, albeit they be plainly prohibited and detested by 'the Laws of God, yet nevertheless, at some Times they have proceeded under Colours of Dispensations by Man's Power, which is 'but usurped, and of Right ought not to be granted, admitted nor 'allowed; for no Man, of what Estate, Degree or Condition soever 'he be, hath Power to dispense with God's Laws, as all the Clergy 'of this Realm in the said Convocations, and the most Part of all 'the famous Universities of Christendom, and we also, do affirm and 'think.'

2 Vent. 11.

32 H. VIII. c. 38.

No man hath Power to dispense with God's Law.

IV. Be it therefore enacted by the Authority aforesaid, That no Person or Persons, Subjects and Resiants of this Realm, or in any your Dominions, of what Estate, Dignity or Degree soever they be, shall from henceforth marry within the said Degrees afore rehearsed, what Pretence soever shall be made to the contrary thereof; and in case any Person or Persons, of what Estate, Dignity, Degree or Condition soever they be, hath been heretofore married within this Realm, or in any the King's Dominions, within any the Degress above expressed, and by any the Archbishops, Bishops or Ministers of the Church of *England*, be separate from the Bonds of such unlawful Marriage, that then every such Separation shall be good, lawful, firm and permanent for ever, and not by any Power, Authority or Means to be revoked or undone hereafter, and that the Children proceeding and procreate under such unlawful Marriage, shall not be lawful ne legitimate; any foreign Laws, Licences, Dispensations or other Thing or Things to the contrary thereof notwithstanding. (1.)

(1.) This Statute is repealed by 28 Henry VIII. c. 7. entitled, *An Act for the Establishment of the Imperial Crown of this Realm*, which proceeds upon some alledged Grounds of invalidity in the Marriage with Anne Bullen, but adopts the same Principles, and contains the same Prohibitions with Respect to the Degrees of Consanguinity or Affinity within which Persons are prohibited from Marriage. Both Statutes are repealed, by Stat. 1 Mary Sess. 2. Chap. 1. entitled *An Act declaring the Queen's Highness to have been Born in a most just and lawful Matrimonie, and also repealing all Acts of Parliament and Sentences of Divorce past and made to the contrary*. The Act after a very curious Preamble, declares all Sentences against the Marriage of Henry VIII. with Queen Catherine to be void; and repeals the two Statutes of 25 and 28 Henry VIII. and declares "the said Marriage had and solemnized betwixt your most noble Father King Henry and your said most

V. [Persons heretofore married within the Degrees aforesaid, shall be separated by the Ordinary's Sentence. Hob. 148. 25 H. 8. c. 21. § 8. n 1.] No. 1. 25 H. VIII. c. 22

VI. [All the Issue procreate between the King and his Wife Queen Anne, shall be his lawful Children.]

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noble Mother Queen Katherine, shall be diffinitively, clearly, and absolutely declared, deemed and adjudged to be and stand with God's Laws, and his most holy Word, and to be accepted, reputed and taken of good Effect and Validity, to all Intents and Purposes."—The two Statutes of 28 Henry VIII. and 1 Mary, are in the Appendix to Runnington's Edition of the Statutes; and there does not appear to be any subsequent Act by which the latter of these Statutes is repealed. In Statute 32 Henry VIII. c. 28. (See the following Number of this Collection) it is provided that all Marriages shall be lawful between Persons that be not prohibited by God's Law to marry—and that no Reservation or Prohibition, God's Law except, shall trouble or impeach any Marriage without the Levitical Degrees. The 99th Canon of 1603, establishes a Table of Prohibitions conformable to the Levitical Degrees, and excluding a Marriage with the Sister of a deceased Wife, but this Canon as being made subsequent to the Reformation, is expressly decided to be of no Authority, in the Case of Middleton and Croft, the famous and elaborate Judgment of Lord Hardwicke in which is contained in the second Volume of Atkins's Reports, p. 650.

In Hill *v.* Good, Vaughan's Reports, 305, a Marriage with the Sister of a deceased Wife, and in Butler *v.* Gastrell, Gilb. Rep. 156, a Marriage with the Aunt of a deceased Wife, are decided to be invalid;—but in neither of these Cases, is any Notice taken of the Statute of Mary, and in both of them Reliance is placed on the Canon of 1603.

A very learned Argument upon this Subject was published by Mr. Alleyne, of which the second Edition was printed in his Lifetime, in 1775, and a third Edition has lately been published, entitled "The Legal Degrees of Marriage stated and considered." The Object of the Argument is to shew, by a critical Examination of the 11th Chapter of Leviticus, and a Comparison of it with the 25th Chapter of Deuteronomy, (which especially enjoins a Marriage with the Wife of a deceased Brother) that the former relates not to Prohibitions of Marriage, but to Adultery. This Construction is approved by the Correspondence of several eminent Scholars, and amongst others, the celebrated Sir William Jones, and several English Divines, contained in the Appendix.

It is also argued, that the mention of the Levitical Degrees in the 32d Henry VIII. is only by way of Instance, and not as a legislative Enactment, that those Degrees shall be considered as marking the Prohibitions by the Divine Law.

The Treatise was written with a View to the obtaining a declaratory Act upon the Subject. The Marriage with the Widow of a deceased Brother, is certainly held invalid by the Spiritual Court; and although the Cases of Hill *v.* Good, and Butler *v.* Gastrell, decided in the Courts of Common Law, are subject to the Observations already mentioned, of admitting the Authority of the Canon, and of not adverting to the Statute of Mary, and the Subject does not appear to have been ever brought before these Courts, upon a View of the Arguments which have been referred to, the Cases I conceive would be regarded as of binding Authority.—But in Case the Subject should at any Time be submitted to the Attention of the Legislature, the Publication alluded to would be found to contain very important Matter for Consideration, with respect both to Scriptural Authority and Moral Policy.

The Marriage with the Widow of a Great Uncle is Legal. Herman *v.* Burrell. Vaughan, 206.

I take it to be agreed, that a Marriage between the Illegitimate Son and Daughter of the same Mother, is invalid; but the Question whether a Marriage with the Bastard Daughter of a Sister is invalid, arose, and was not decided, in *Hains v. Jeffell*, 1 Ld. Raym. 68. 5 Mod. 168. Comyns 2. Comb. 356, but such a Marriage appears to have been considered as void by the Spiritual Court. See Sir William Scott's Judgment in Horner *v.* Liddiard, reported by Dr. Croke.

It is clear that a Marriage cannot after the Death of either of the Parties, be impeached for Consanguinity or Affinity.

No. 1.
25 H. VIII. c. 22.

VII. [The Imperial Crown of England, &c. intailed.]

[The Lady Elizabeth the first Issue Female of the King and Queen Anne his Wife.]

VIII. [This Act shall be proclaimed in all the Shires of England.]

[The Penalty for hurting the King's Person, disturbing his Title to the Crown, or slandering his Marriage.]

[Rep. 1 E. 6. c. 12. § 2.]

[The Rights of all others, except the Offenders, saved.]

IX. [The Penalty for publishing any Thing to the Peril of the King, or the Slander of his Marriage, or to the Disheritance of his Issue.]

X. [An Offender shall not have the Privilege of Sanctuary.]

XI. [Who shall have the Government of the King's Issue and Heir during Minority.]

XIII. [All Persons shall be sworn to perform the Contents of this Act. 26 H. 8. c. 2.]

[The Penalty of them which refuse to take the Oath.]

Marriage with carnal Knowledge.

XIV. Provided always, That the Article in this Act contained concerning Prohibitions of Marriages within the Degrees afore-mentioned in this Act, shall always be taken, interpreted and expounded of such Marriages, where Marriages were solemnized and carnal Knowledge was had.

No. 2.

32 Henry VIII. c. 38.—For Marriages to stand notwithstanding Pre-contracts. [See 26 Geo. II. c. 33. s. 13. infra.]

32 H. VIII. c. 38. What Marriages are lawful, and what are not. 2 Inst. 683.

'WHEREAS heretofore the usurped Power of the Bishop of *Rome* hath always intangled and troubled the meer Jurisdiction and regal Power of this Realm of *England*, and also unquieted much the Subjects of the same, by his usurped Power in them, as by making that unlawful which by God's Word is lawful, both in Marriages and other Things, as hereafter shall appear more at length, and till now of late in our Sovereign Lord's Time, which is otherwise by Learning taught than his Predecessors in Times past of long Time have been, hath so continued the same, whereof yet some Sparks be left, which hereafter might kindle a great Fire, and so remaining, his Power not to seem utterly extinct:

The Enormity of avoiding Marriages by Pre-contracts.

II. Therefore it is thought most convenient to the King's Highness, his Lords Spiritual and Temporal, with the Commons of this Realm, assembled in this present Parliament, That two Things specially for this Time be with Diligence provided for, whereby many Inconveniences have ensued, and many mo else mought ensue and follow; as where heretofore divers and many Persons, after long Continuance together in Matrimony, without any Allegation of either of the Parties, or any other at their Marriage, why the same Matrimony should not be good, just and lawful, and after the same Matrimony solemnized and consummate by carnal Knowledge, and also sometime Fruit of Children ensued of the same Marriage, have nevertheless, by an unjust Law of the Bishop of *Rome*, which is, That upon Pretence of a former Contract made, and not consummate by carnal Copulation (for Proof whereof two Witnesses by that Law were only required) been divorced and separate, contrary to God's Law, and so the true Matrimony, both solemnized in the Face of the Church, and consummate with bodily Knowledge, and confirmed also with the Fruit of Children had between them, clearly frustrate and dissolved: Further also, by

No. 1.
32 H VIII c. 38

The Inconveniences of Dispensations to marry

'reason of other Prohibitions than God's Law admitteth, for their 'Lucre by that Court invented, the Dispensations whereof they 'always reserved to themselves, as in Kindred or Affinity between 'Cousin-Germanes, and so to fourth and fourth Degree, carnal 'Knowledge of any of the same Kin, or Affinity before in such out-'ward Degrees, which else were lawful, and be not prohibited by 'God's Law, and all because they would get Money by it, and keep a 'Reputation to their usurped Jurisdiction, whereby not only much 'Discord between lawful married Persons hath (contrary to God's 'Ordinance) arisen, much Debate and Suit at the Law, with wrong-'ful Vexation, and great Damage of the innocent Party hath been 'procured and many just Marriages brought in Doubt and Danger of 'undoing, and also many Times undone, and lawful Heirs disherited, 'whereof there had never else, but for his vain-glorious Usurpation, 'been moved any such Question, since Freedom in them was given 'us by God's Law, which ought to be most sure and certain, but 'that notwithstanding, Marriages have been brought into such an 'Uncertainty thereby, that no Marriage could be so surely knit and 'bounden, but it should lie in either of the Parties Power and Arbiter, 'casting away the Fear of God, by Means and Compasses to prove a 'Pre-contract, a Kindred and Alliance, or a carnal Knowledge, to 'defeat the same, and so under the Pretence of these Allegations 'afore rehearsed, to live all the Days of their Lives in detestible 'Adultery, to the utter Destruction of their own Souls, and the 'Provocation of the terrible Wrath of God upon the Places where 'such Abominations were used and suffered.' Be it therefore enacted by the King our Sovereign Lord, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, That from the first Day of the Month of *July* next coming, in the Year of our Lord God One Thousand Five Hundred and Forty, all and every such Marriages as within this Church of *England* shall be contracted between lawful Persons (as by this Act we declare all Persons to be lawful, that be not prohibited by God's Law to marry) such Marriages being contract and solemnized in the Face of the Church, and consummate with bodily Knowledge, or Fruit of Children or Child being had therein between the Parties so married, shall be by Authority of this present Parliament aforesaid deemed, judged and taken to be lawful, good, just and indissoluble, notwithstanding any Pre-contract or Pre-contracts of Matrimony not consummate with bodily Knowledge, which either of the Parties so married or both shall have made with any other Person or Persons before the Time of contracting that Marriage which is solemnized and consummate, or whereof such Fruit is ensued, or may ensue, as afore, and notwithstanding any Dispensation, Prescription, Law, or other Thing granted or confirmed by Act or otherwise; and *that no Reservation or Prohibition, God's Law except, shall trouble or impeach any Marriage without the Levitical Degrees;** and that no Person, of what Estate, Degree or Condition soever he or she be, shall, after the first Day of the said Month of *July* aforesaid, be admitted in any of the Spiritual Courts within this the King's Realm, or any his Grace's other Lands and Dominions, to any Process, Plea or Allegation, contrary to this foresaid Act.

( ) H 3 (o I (a. H I r o . l e hat I to itrat Marriage that be S uch CC That Marriages indissoluble as such is contract and solemnized in the Face of the Church, and consummate with bodily Knowledge or Fruit of Child, notwithstanding any Pre-contract repealed by 2 & 3 Ed. 6 c. § 2 and 1 & 2 Ph. & M. c. 8 § 19. and in part revived by 1 El. c. 1 § 12 as to so much as not repealed by 2 & 3 Ed. 6. c. 23.

* See Note on No 1. the last Statute.

No. 3.

2 and 3 Edward VI. c. 23.—The Repeal of an Act made in the xxxij. Year of King HENRY the Eighth, which was made, That Marriage contracted in the Face of the Church, and consummate with bodily Knowledge, to be deemed lawful, any former Contract notwithstanding.

2 & 3 Ed VI. c 23.

Part of the Statute of Precontracts repealed.

'WHEREAS in the Thirty-second Year of the Reign of the late 'King of famous Memory, King HENRY the Eighth, because 'that many Inconveniences had chanced in this Realm by breaking 'and dissolving of good and lawful Marriages, yea, whereupon also 'sometime Issue and Children had followed, under the Colour and 'Pretence of a former Contract made with another, the which Con-'tract divers Times was but very slenderly proved, and often but sur-'mised by the Malice of the Party who desired to be dissolved from 'the Marriage which they liked not, and to be coupled with another, 'there was an Act made, That all and every such Marriages, as 'within the Church of *England* should be contracted and solemnized 'in the Face of the Church, and consummate with bodily Know-'ledge, or Fruit of Children or Child being had between the Parties 'so married, should be by the Authority of the said Parliament 'deemed, judged and taken to be lawful, good, just and indissoluble, 'notwithstanding any Pre-contract or Pre-contracts of Matrimony 'not consummate with bodily Knowledge, which either of the Persons 'so married, or both, had made with any other Person or Persons 'before the Time of contracting that Marriage which is solemnized or 'consummated, or whereof such Fruit is ensued or may ensue, as 'by the same Act more plainly may appear: Sithence the Time of 'which Act, although the same was godly meant, the Unruliness of 'Men hath ungodly abused the same, and divers Inconveniences '(intolerable in manner to Christian Ears and Eyes) followed there-'upon, Women and Men breaking their own Promises and Faiths 'made by the one unto the other, so set upon Sensuality and Plea-'sure, that if after the Contract of Matrimony they might have whom 'they more favoured and desired, they could be content by Lightness 'of their Nature to overturn all that they had done afore, and not 'afraid in Manner, even from the very Church Door and Marriage-'Feast, the Man to take another Spouse, and the Espouse to take 'another Husband, more for bodily Lust and carnal Knowledge, than 'for Surety of Faith and Truth, or having God in their good Re-'membrance, contemning many Times also the Commandment of 'the Ecclesiastical Judge, forbidding the Parties having made the 'Contract to attempt to do any Thing in Prejudice to the same:'

A Repeal of so much of the Statute of 32 H. VIII. c. 38, as maketh that Marriage indissoluble which is solemnized in the Church, and consummated with bodily Knowledge and Fruit of Child. Vin. V. 15,622.

II. Be it therefore enacted by the King's Highness, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, That as concerning Pre-contracts, the said former Statute shall from the first Day of *May* next coming cease, be repealed, and of no Force or Effect, and be reduced to the Estate and Order of the King's Ecclesiastical Laws of this Realm, which immediately before the making of the said Estatute in this Case were used in this Realm: So that from the said first Day of *May*, when any Cause or Contract of Marriage is presented to have been made, it shall be lawful to the King's Ecclesiastical Judge of that Place to hear and examine the said Cause: And (having the said Contract sufficiently and lawfully proved before him) to give Sentence for Matrimony, commanding

No. 3.
2 & 3 Ed. VI. c.

Solemnization, Cohabitation, Consummation and Tractation as becometh Man and Wife to have, with inflicting all such Pains upon the Disobedients and Disturbers thereof, as in Times past before the said Statute the King's Ecclesiastical Judge by the King's Ecclesiastical Laws ought and might have done, if the said Statute had never been made; any Clause, Article or Sentence in the said Statute to the contrary in any wise notwithstanding *

III. Provided always, and be it enacted, That this Act do not extend to disannul, dissolve or break any Marriage that hath or shall be so solemnizated and consummated before the said first Day of *May* next ensuing, by Title or Colour of any Pre-contract, but that they be and be deemed of like Force and Effect, to all Intents, Constructions and Purposes, as if this Act had never been had ne made; any Thing in this present Act notwithstanding.

IV. Provided also, That this Act do not extend to make good any of the other Causes to the Dissolution or disannulling of Matrimony, which be in the said Act spoken of and disannulled, but that in all other Causes and other Things therein mentioned, the said former Act of the Thirty-second Year of the late King of famous Memory do stand and remain in his full Strength and Power; any Thing in this Act notwithstanding. [See 1 El. c. 1. § 11.]

4. Confirms the Residue

* See St. 26 Geo. II. c. 33. S. 13. infra

No. 4.

15 Geo. II. c. 30.—An Act to prevent the Marriage of Lunaticks.*

15 Geo. III. c. 30.
4 Geo. II. c. 10.

'WHEREAS Persons who have the Misfortune to become Lunaticks, may, by reason of such their Disorder, be liable to be surprized into unsuitable Marriages, which may be of pernicious Consequence, and a great Misfortune to their Families:' Wherefore, for preventing the same, and the ill Consequence thereof, Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the Twenty-fourth Day of *June* in the Year of our Lord One Thousand Seven Hundred and Forty-two, in case any Person who now is, or at any Time hereafter shall be, found a Lunatick, by any Inquisition taken or to be taken by Virtue of a Commission under the Great Seal of *Great Britain*; or any Lunatick or Person under a Phrenzy, whose Person and Estate, by Virtue of any Act of Parliament, now are, or hereafter shall be committed to the Care and Custody of particular Trustees, shall marry before he or she shall be declared of sane Mind by the Lord High Chancellor of *Great Britain*, the Lord Keeper, or Lords Commissioners of the Great Seal of *Great Britain* for the Time being, or such Trustees as aforesaid, or the major Part of them respectively; every such Marriage shall be, and is hereby declared to be null and void to all Intents and Purposes whatsoever.

* See 51 Geo. III. c. 37. post.

No. 5.

26 Geo. II. c. 33.—An Act for the better preventing of clandestine Marriages.

26 Geo. II. c. 33. Publication of Banns.

'WHEREAS great Mischiefs and Inconveniences have arisen 'from Clandestine Marriages;' For preventing thereof for the future, Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the Twenty-fifth Day of *March* in the Year of our Lord One Thousand Seven Hundred and Fifty-four, all Banns of Matrimony shall be published in an audible Manner in the Parish Church, or in some publick Chapel, in which publick Chapel Banns of Matrimony have been usually published, (1) of or belonging to such Parish or Chapelry wherein the Persons to be married shall dwell, according to the Form of Words prescribed by the Rubrick prefixed to the Office of Matrimony in the Book of Common Prayer, upon Three (2) *Sundays* preceding the Solemnization of Marriage, during the Time of Morning Service, or of Evening Service (if there be no Morning Service in such Church or Chapel upon any of those *Sundays*) immediately after the second Lesson: And whensoever it shall happen that the Persons to be married shall dwell in divers Parishes or Chapelries, the Banns shall in like Manner be published in the Church or Chapel belonging to such Parish or Chapelry wherein each of the said Persons shall dwell; and where both or either of the Persons to be married shall dwell in any Extra-parochial Place, (having no Church or Chapel wherein Banns have been usually published) then the Banns shall in like Manner be published in the Parish Church or Chapel belonging to some Parish or Chapelry adjoining to such Extra-parochial Place: And where Banns shall be published in any Church or Chapel belonging to any Parish adjoining to such Extra-parochial Place, the Parson, Vicar, Minister or Curate, publishing such Banns, shall, in Writing under his Hand, certify the Publication thereof in such Manner as if either of the Persons to be married dwelt in such adjoining Parish; and that all other the Rules prescribed by the said Rubrick concerning the Publication of Banns, and the Solemnization of Matrimony, and not hereby altered, shall be duly observed; and that in all Cases where Banns shall have been published, the Marriage shall be solemnized in one of the Parish Churches or Chapels where such Banns have been published, and in no other Place whatsoever.

Minister to sign the Publication;

and the Marriage to be solemnized in one of the Churches where the Banns have been published.

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(1) In an Action for Criminal Conversation upon a Marriage solemnized in a Chapel, it seems necessary to give some Evidence that Marriages were celebrated by Banns in such Chapel previous to the Act;—but Instances since are Evidence of such Marriages having been celebrated. See Taunton *v.* Wyborn, 2 Camp. N. P. 297. In Local Acts for erecting Churches, it has been provided, that all Fees for Christenings, *Marriages*, and Burials, shall be accounted for to the Rector of the Parish, and this has been very generally acted upon as giving an implied Power to celebrate such Marriages, several legal Opinions having been given in Support of such Construction, but I am not aware of any legal Decision upon the Subject. See Rex *v.* Northfield Doug. 634.

(2) In Standen *v.* Standen, Peake N.P. 32. the Husband was allowed to prove that the Banns were only published Twice; but his Credit was left to the Jury on Account of the Nature of his Evidence, and he was not believed.

No. 5.

26 Geo II. c. 33.

Notice of the Names, Places of Abode and Time of Residence of the Parties to be given to the Minister seven Days before Publication of Banns.

II. Provided always, and it is hereby further enacted, That no Parson, Vicar, Minister or Curate shall be obliged to publish the Banns of Matrimony between any Person whatsoever, unless the Persons to be married shall, seven Days at the least before the Time required for the first Publication of such Banns respectively, deliver or cause to be delivered to such Parson, Vicar, Minister or Curate, a Notice in Writing of their true Christian and Surnames, and of the House or Houses of their respective Abodes within such Parish, Chapelry or Extra-parochial Place as aforesaid, and of the Time during which they have dwelt, inhabited or lodged in such House or Houses respectively. (3)

Minister not punishable for solemnizing Marriage after Banns published, where the Parents or Guardians give no Notice of Dissent; but where such Dissent shall be given, Publication of Banns to be void.

III. Provided always, and be it enacted by the Authority aforesaid, That no Parson, Minister, Vicar or Curate solemnizing Marriages after the Twenty-fifth Day of *March* One Thousand Seven Hundred and Fifty-four, between Persons, both or one of whom shall be under the Age of Twenty-one Years, after Banns published, shall be punishable by Ecclesiastical Censures for solemnizing such Marriages without Consent of Parents or Guardians, whose Consent is required by Law, unless such Parson, Minister, Vicar or Curate shall have Notice of the Dissent of such Parents or Guardians; and in case such Parents or Guardians, or one of them, shall openly and publickly declare, or cause to be declared in the Church or Chapel where the Banns shall be so published, at the Time of such Publication, his, her, or their Dissent to such Marriage, such Publication of Banns shall be absolutely void.

Licences to be granted to solemnize Matrimony in the Church or Chapel of such Parish only, where one of the Parties shall have resided for four Weeks before, &c.

IV. And it is hereby further enacted, That no Licence of Marriage shall, from and after the said Twenty-fifth Day of *March* in the Year One Thousand Seven Hundred and Fifty-four, be granted by any Archbishop, Bishop, or other Ordinary or Person having Authority to grant such Licences, to solemnize any Marriage in any other Church or Chapel, than in the Parish Church or Publick Chapel of or belonging to the Parish or Chapelry, within which the usual Place of Abode of one of the Persons to be married shall have been for the Space of four Weeks immediately before the granting of such Licence; or where both or either of the Parties to be married shall dwell in any Extra-parochial Place, having no Church or Chapel wherein Banns have been usually published, then in the Parish Church or Chapel belonging to some Parish or Chapelry adjoining to such Extra-parochial Place, and in no other Place whatsoever.

Places which may be deemed extra-parochial by this Act.

V. Provided always, and be it enacted by the Authority aforesaid, That all Parishes where there shall be no Parish Church or Chapel belonging thereto, or none wherein Divine Service shall be usually celebrated every *Sunday*, may be deemed Extra-parochial Places for the Purposes of this Act, but not for any other Purpose.

Archbishop of Canterbury's Right to grant Special Licences reserved.

VI. Provided always, That nothing herein before contained shall be construed to extend to deprive the Archbishop of *Canterbury* and his Successors, and his and their proper Officers, of the Right which hath hitherto been used, in virtue of a certain Statute made in the Twenty-fifth Year of the Reign of the late King Henry the Eighth, intituled, *An Act concerning* Peter Pence *and Dispensations*; of granting Special Licences to marry at any convenient Time or Place.

Surrogate deputed to grant Licences to take an Oath of Office, and give Security.

VII. Provided always, and be it enacted, That from and after the Twenty-fifth Day of *March* in the Year One Thousand Seven Hundred and Fifty-four, no Surrogate deputed by any Ecclesiastical Judge, who hath Power to grant Licences of Marriage, shall grant

(3) A Clergyman who omits taking the Precautions directed by this Clause, is in great Hazard of incurring the Animadversion of the Court of Chancery, in case either of the Parties is a Ward of that Court. See Nicholson *v.* Squire, 16 Vesey, 259.

No. 5. 26 Geo. II. c. 33.

any such Licence before he hath taken an Oath before the said Judge faithfully to execute his Office, according to Law, to the best of his Knowledge, and hath given Security by his Bond in the Sum of One Hundred Pounds to the Bishop of the Diocese, for the due and faithful Execution of his said Office.

Persons convicted of solemnizing Matrimony without Banns or Licence, or in any other Place, except by Special Licence,

VIII. *And whereas many Persons do solemnize Matrimony in Prisons and other Places without Publication of Banns or Licence of Marriage first had and obtained*; Therefore, for the Prevention thereof, Be it enacted, That if any Person shall, from and after the said Twenty-fifth Day of *March* in the Year One Thousand Seven Hundred and Fifty-four, solemnize Matrimony in any other Place than a Church or Publick Chapel, where Banns have been usually published, unless by special Licence from the Archbishop of *Canterbury*; or shall solemnize Matrimony without Publication of Banns, unless Licence of Marriage be first had and obtained from some Person or Persons having Authority to grant the same, every Person knowingly and wilfully so offending, and being lawfully convicted thereof, shall be deemed and adjudged to be guilty of Felony, and shall be transported to some of his Majesty's Plantations in *America* for the Space of Fourteen Years, according to the Laws in Force for Transportation of Felons; and all Marriages solemnized from and after the Twenty-fifth Day of *March* in the Year One Thousand Seven Hundred and Fifty-four, in any other Place than a Church or such Publick Chapel, unless by Special Licence as aforesaid, or that shall be solemnized without Publication of Banns, or Licence of Marriage from a Person or Persons having Authority to grant the same first had and obtained, shall be null and void to all Intents and Purposes whatsoever.

to be transported,

and the Marriages to be void.

Prosecutions for the same to be commenced.

IX. Provided, That all Prosecutions for such Felony shall be commenced within the Space of Three Years after the Offence committed.

Proof of the Parties dwelling in the Parishes, &c. where Marriages shall have been solemnized, not necessary to the Validity of such Marriage.

X. Provided always, That after the Solemnization of any Marriage, under a Publication of Banns, it shall not be necessary, in Support of such Marriage, to give any Proof of the actual Dwelling of the Parties in the respective Parishes or Chapelries wherein the Banns of Matrimony were published; or where the Marriage is by Licence, it shall not be necessary to give any Proof that the usual Place of Abode of one of the Parties, for the Space of four Weeks as aforesaid, was in the Parish or Chapelry where the Marriage was solemnized; nor shall any Evidence in either of the said Cases be received to prove the Contrary in any Suit touching the Validity of such Marriage.

Marriages solemnized by Licence without Consent of the Parents or Guardians where either of the Parties (not being a Widower or Widow) shall be under Age void.

XI. And it is hereby further enacted, That all Marriages solemnized by Licence, after the said Twenty-fifth Day of *March* One Thousand Seven Hundred and Fifty-four, where either of the Parties, not being a Widower or Widow, shall be under the Age of Twenty-one Years, which shall be had without the Consent of the Father of such of the Parties, so under Age (if then living) first had and obtained, or if dead, of the Guardian or Guardians of the Person of the Party so under Age, lawfully appointed, or one of them; and in case there shall be no such Guardian or Guardians, then of the Mother (if living and unmarried) or if there shall be no Mother living and unmarried, then of a Guardian or Guardians of the Person appointed by the Court of *Chancery*, shall be absolutely null and void to all Intents and Purposes whatsoever. (4)

(4) A Bastard is within this Provision, and the Consent of the Mother or putative Father is not sufficient. See Priestley *v.* Hughes, 11 East, 1. and the Authorities there cited—especially Dr. Croke's Report of the Case of Horner *v.* Liddiard, before Sir William Scott.

No. 5.

26 Geo. II. c. 33.

XII. 'And whereas it may happen, that the Guardian or 'Guardians, Mother or Mothers, of the Parties to be married, or one 'of them, so under Age as aforesaid, may be *Non compos mentis*, or 'may be in Parts beyond the Seas, or may be induced unreasonably, 'and by undue Motives to abuse the Trust reposed in him, her, or 'them, by refusing or withholding his, her, or their Consent to a 'proper Marriage;' Be it therefore enacted, That in case any such Guardian or Guardians, Mother or Mothers, or any of them, whose Consent is made necessary as aforesaid, shall be *Non compos mentis*, or in Parts beyond the Seas, or shall refuse or withhold his, her, or their Consent to the Marriage of any Person, it shall and may be lawful for any Person desirous of marrying, in any of the before-mentioned Cases, to apply by Petition to the Lord Chancellor, Lord Keeper, or the Lords Commissioners of the Great Seal of *Great Britain* for the Time being, who is and are hereby impowered to proceed upon such Petition, in a summary Way; and in case the Marriage proposed shall upon Examination appear to be proper, the said Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal for the Time being, shall judicially declare the same to be so by an Order of Court, and such Order shall be deemed and taken to be as good and effectual to all Intents and Purposes, as if the Guardian or Guardians, or Mother of the Person so petitioning, had consented to such Marriage.

Where the Guardians or Mother shall be Non compos mentis, or in Parts beyond the Seas, or shall unreasonably withhold their Consent, the Parties may apply to the Lord Chancellor, &c. and being approved by Order of the Court shall be effectual.

XIII. And it is hereby further enacted, That in no Case whatsoever shall any Suit or Proceeding be had in any Ecclesiastical Court, in order to compel a Celebration of any Marriage in *facie Ecclesiæ*, by Reason of any Contract of Matrimony whatsoever, whether *per verba de præsenti*, or *per verba de futuro*, which shall be entered into after the Twenty-fifth Day of *March* in the Year One Thousand Seven Hundred and Fifty-four; any Law or Usage to the contrary notwithstanding.

No Suit to be in the Ecclesiastical Court to compel a Marriage in facie Ecclesiæ, by Reason of any Contract.

XIV. And for preventing undue Entries and Abuses in Registers of Marriages; Be it enacted by the Authority aforesaid, That on or before the Twenty-fifth Day of *March* in the Year One Thousand Seven Hundred and Fifty-four, and from Time to Time afterwards as there shall be Occasion, the Churchwardens and Chapelwardens of every Parish or Chapelry shall provide proper Books of Vellum, or good and durable Paper, in which all Marriages and Banns of Marriage respectively, there published or solemnized, shall be registered, and every Page thereof shall be marked at the Top, with the Figure of the Number of every such Page, beginning at the second Leaf with Number one; and every Leaf or Page so numbered, shall be ruled with Lines at proper and equal Distances from each other, or as near as may be; and all Banns and Marriages published or celebrated in any Church or Chapel, or within any such Parish or Chapelry, shall be respectively entered, registered, printed, or written upon or as near as conveniently may be to such ruled Lines, and shall be signed by the Parson, Vicar, Minister or Curate, or by some other Person in his Presence, and by his Direction; and such Entries shall be made as aforesaid, on or near such Lines in successive Order, where the Paper is not damaged or decayed, by Accident or Length of Time, until a new Book shall be thought proper or necessary to be provided for the same Purposes, and then the Directions aforesaid shall be observed in every such new Book; and all Books provided as aforesaid shall be deemed to belong to every such Parish or Chapel respectively, and shall be carefully kept and preserved for publick Use.

Churchwardens to provide Books in which are to be registered all Marriages and Banns;

the same to be signed by the Minister;

and the Books to belong to the Parish, and to be kept for publick Use.

XV. And in order to preserve the Evidence of Marriages, and to make the Proof thereof more certain and easy, and for the Direction of Ministers in the Celebration of Marriages and registering thereof,

No 5.
26 Geo. II. c. 33

Marriages to be solemnized in the Presence of two Witnesses, besides the Minister, and to be registered,

Be it enacted, That from and after the Twenty-fifth Day of *March* in the Year One Thousand Seven Hundred and Fifty-four, all Marriages shall be solemnized in the Presence of two or more credible Witnesses, besides the Minister who shall celebrate the same; and that immediately after the Celebration of every Marriage, an Entry thereof shall be made in such Register to be kept as aforesaid; in which Entry or Register it shall be expressed, That the said Marriage was celebrated by Banns or Licence; and if both or either of the Parties married by Licence, be under Age, with Consent of the Parents or Guardians, as the Case shall be; and shall be signed by the Minister with his proper Addition, and also by the Parties married, and attested by such two Witnesses; which Entry shall be made in the Form or to the Effect following; that is to say,

and signed by the Minister, Parties, and Witnesses.

Form.

A. B. of [the / this] Parish
and *C. D.* of [the / this] Parish
were married in this [Church / Chapel] by [Banns / Licence] with Consent of [Parents / Guardians]
this Day of in the Year

by me *J. J.* [Rector / Vicar / Curate]

This Marriage was solemnized between us *A. B.* / *C. D.* in the Presence of
E. F.
G. H.

Persons convicted of making a false Entry in the said Register,

or of forging, &c. any Licence,

or of destroying with an ill Intent, such Register,

to suffer Death.

XVI. And be it further enacted by the Authority aforesaid, That if any Person shall, from and after the Twenty-fifth Day of *March* in the Year One Thousand Seven Hundred and Fifty-four, with Intent to elude the Force of this Act, knowingly and wilfully insert, or cause to be inserted in the Register Book of such Parish or Chapelry as aforesaid, any false Entry of any Matter or Thing relating to any Marriage; or falsely make, alter, forge or counterfeit, or cause or procure to be falsely made, altered, forged or counterfeited, or act or assist in falsely making, altering, forging or counterfeiting any such Entry in such Register; or falsely make, alter, forge or counterfeit, or cause or procure to be falsely made, altered, forged or counterfeited, or assist in falsely making, altering, forging or counterfeiting any such Licence of Marriage as aforesaid; or utter or publish as true any such false, altered, forged or counterfeited Register as aforesaid, or a Copy thereof, or any such false, altered, forged or counterfeited Licence of Marriage, knowing such Register or Licence of Marriage respectively, to be false, altered, forged or counterfeited; or if any Person shall, from after the said Twenty-fifth Day of *March*, wilfully destroy, or cause or procure to be destroyed, any Register Book of Marriages, or any Part of such Register Book, with Intent to avoid any Marriage, or to subject any Person to any of the Penalties of this Act; every Person so offending, and being thereof lawfully convicted, shall be deemed and adjudged to be guilty of Felony, and shall suffer Death as a Felon, without Benefit of Clergy.

Marriages of the Royal Family.

XVII. Provided always, That this Act, or any Thing therein contained, shall not extend to the Marriages of any of the Royal Family.

XVIII. Provided likewise, That nothing in this Act contained shall extend to that Part of *Great Britain* called *Scotland*, nor to

any Marriages amongst the People called *Quakers*, or amongst the Persons professing the *Jewish* Religion, where both the Parties to any such Marriage shall be of the People called *Quakers*, or Persons professing the *Jewish* Religion respectively, nor to any Marriages solemnized beyond the Seas. (5)

No. 5. 26 Geo. II. c. 33. and of Quakers and Jews, and of Persons in Scotland, or beyond the Seas excepted.

(5) Soon after the passing of the Act it was decided in the Court of Delegates in a Case of Beancroft v. Bearcroft, that a Marriage between two English Persons who go to Scotland solely for the Purpose, is valid; and such is now the established Law.

Upon a Trial, on the Home Circuit, for Polygamy, (in which it is necessary to prove an actual Marriage,) Evidence was required of the Law of Scotland with Respect to the Legality of the first Marriage, which was there contracted; and the Evidence of such, being the known Law of the Country, was rejected in Consequence of the unfitness of the Person whose Testimony was adduced upon the Subject;—and the Judge is said to have intimated, that such Evidence should be by the Certificate of the Lord Advocate or other authorised Person, and that the Court, upon such Subject, would not attend to the Information of a Tobacconist. This Case which I partly cite from Recollection of Newspaper Reports, but which, since composing the principal Part of this Note, I find referred to in the Case of the King and Brampton, 10 East, 285. involves in its Decision Principles which would require a very serious Examination before they were generally adopted. In the first Place—the Necessity of requiring any Evidence at all upon the Subject, is a great and important Question, when considered as a general Question respecting the mutual Recognition of the Laws of the different Parts of the same United Kingdom. Information may be often very properly applied for, for the mutual Assistance of the Tribunals of the respective Parts of the United Kingdom, but that is the Information of Science, the Council of an Assessor, and not the Information of Evidence, which is of a perfectly different Nature—and if such Evidence was necessary in the particular Case, it is equally necessary in all Cases when a Question of the Law of one Member of the Kingdom becomes a Matter of incidental Enquiry in the other.—2. But if it was necessary that Evidence should be given upon the general Principle that the Law of other Countries is Matter of Fact, and as such ought to be proved, it seems a most extraordinary Doctrine to hold that the mere Situation in Life of a Witness can be taken as an Objection to the Reception of his Testimony. The Situation in Life, or the Habits and Character of a Witness, may be fairly taken into Consideration, in determining the Effect of his Evidence as to adequacy of Knowledge, or as to the Degree of Credit which he shall receive, but cannot, upon any correct judicial Principles, be opposed as a Bar to his Admissibility, and it cannot be supposed that in the particular Case, if the Evidence had been regarded as otherwise than legally exceptionable, a serious Doubt could have been stated to the Jury upon its Credit or Accuracy with Respect to a Matter of such general and undoubted Notoriety.—3. As the Subject may come in Question with Respect to Marriages contracted in distant Countries, it is proper to consider whether a Proof of two Persons having in any Manner or Form agreed to, enter into the Relation of Husband and Wife, and having been afterwards reputed as such, should not be taken as sufficient until positive Evidence is offered of its Invalidity. Marriage, however important a Contract it may be, is only a Contract to which no particular Ceremony or public Sanction is requisite in its own Nature, or according to the Law which in some Countries, especially in Scotland, actually subsist.—In most Countries however, peculiar Solemnities are very judiciously superinduced as essential to the Validity of this Engagement—but the Necessity of such Solemnities is not to be presumed; and the primary Evidence which I have alluded to would therefore seem sufficient until contradicted by other Testimony, shewing the Necessity of further Requisites than such as upon general Principles would be sufficient.

Upon a Trial for Polygamy, before Mr. Serjeant Marshall, as Judge of Assize, at Lancaster Summer Assizes, 1814, Evidence of a Marriage in Ireland, by a Dissenting Clergyman, was held sufficient, without giving any Proof of the Law of Ireland upon the Subject.

No. 5.
26 Geo. II. c. 33
This Act to be read in all Parish Churches and publick Chapels.

XIX. And be it further enacted by the Authority aforesaid, That this Act shall be publickly read in all Parish Churches and publick Chapels, by the Parson, Vicar, Minister or Curate of the respective Parishes or Chapelries, on some *Sunday* immediately after Morning Prayer, or immediately after Evening Prayer, if there shall

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With Respect to the actual Law of Ireland, it is expressly provided, by Stat. 21 and 22 Geo. III. c. 25, that Marriages between Protestant Dissenters, solemnized by Dissenting Ministers or Teachers, shall be valid. The Acts of the Irish Parliament, containing Provisions against the Marriage of Protestants with Catholics, or Protestants with Protestants, by any Popish Priest, acknowledge, by necessary Implication, the Validity of such Marriages between Catholics.—See 1 Gabbett, 410-411.

In the late Case of Dalrymple *v.* Dalrymple, before the Consistory Court of London, and afterwards before the Delegates, for Restitution of Conjugal Rights, Evidence was given of the Law of Scotland, by the principal Lawyers of that Country, upon regular Depositions.—See the Report of the Case by Dr. Dodson.

In the Case of the King and the Inhabitants of Brampton, 10 East, 282, a British Soldier in Saint Domingo being desirous of marrying the Widow of another Soldier there, they went to a Chapel where the Ceremony was performed by a Person appearing as a Priest, and officiating as such, the Service being in French, but interpreted into English by one who officiated as Clerk, and which was understood to be the Marriage Service of the Church of England, after which there was a Cohabitation of several Years. The Court of Quarter Sessions thought, upon a Question of Settlement, that this was not sufficient Evidence of a legal Marriage;—but fortunately, not considering it as a Case affected by the Hints so often thrown out to that Tribunal, of the Confidence which they ought to entertain in their own Opinion, they stated a Case for the Opinion of the Court of King's Bench, Bench, who considered that there was sufficient Evidence of a good Marriage either according to the Law of England or according to the Law of the Country where it took Place.—The Case contains some important Information respecting the Doctrine of Marriages *per verba de præsenti*, previous to this Statute, for the Validity of which it appears that the Presence of a Clergyman was requisite; but that a Marriage by a Roman Catholic Clergyman was sufficient.

One of the Mischiefs against which the Act was intended to provide, was the establishing Officers in the Fleet and other Places for the Celebration of Clandestine Marriages. Books have been preserved of the Entries of such Marriages, but from the many fabricated Entries which they have been found to contain, different Judges have refused to receive them in Evidence, but they were admitted by Mr. Justice Heath in Pasingham *v.* Lloyd at Shrewsbury Assizes, 1794. See Peake's Evidence, 89. In Cooke *v.* Lloyd, Append. ibid. 74. Mr. Justice Le Blanc refused to receive such an Entry in Evidence, as being no more than a private Memorandum made by Somebody who had no Authority to make it, and who might put down any Thing he pleased, whether true or false. But it is observable, that in none of these Cases the Question was carried farther than the Court of Nisi Prius—and the Case of Lloyd and Passingham coming before the Court of Chancery after an Interval of Fourteen Years upon some Grounds for imputing actual Forgery to the particular Entry in that Case, the Lord Chancellor considered the general Question as one which was still open. See 16 Vesey, 59. Considering the State of the Law before the passing of the Act, it certainly does not seem desirable in the Nature of the Thing to exclude a Species of Evidence which would continually result from and accompany the actual Occurrence of the Fact recorded, and any Experience of improper Practices with Respect to the Custody and Management of the Books at a particular Place, would hardly seem sufficient to prevent the Admissibility of the Evidence whatever Cautions it might reasonably suggest with Respect to its Credibility.

Many Doubts have been entertained of the Policy and Justice of this Act, as giving an undue Weight to Parental Authority; and an unsuccessful Attempt was made in 1781 to Repeal it. Mr. Burke's Speech against the

be no Morning Service on that Day, in each of the Months of *September, October, November*, and *December*, in the Year of our Lord One Thousand Seven Hundred and Fifty-three, and afterwards at the same Times, on four several *Sundays* in each Year, (that is to say,) The *Sundays* next before the twenty-fifth Day of *March*, twenty-fourth Day of *June*, twenty-ninth Day of *September*, and twenty-fifth Day of *December* respectively, for two Years, to be computed from and immediately after the first Day of *January*, in the said Year One Thousand Seven Hundred and Fifty-four. No. 5. 26 Geo. II. c. 33.

Repeal, contained in his Works, vol. 9. 8vo. 135. is a very satisfactory and able Vindication of the Act. Considering the Motives which usually lead to an Infraction of this Act, and the Opinions manifested by the Laws of almost all Countries, in Favour of giving to Parents an Interposition with Respect to the Marriage of their Children under a certain Age, I conceive it would be desirable that Provisions should be made for rendering it effectual. For this Purpose it may not be improper to require that every Direction for the Publication of Banns, should specify the Ages of the Parties, their particular Habitation, their Parentage and other proper Requisites; and that some authentic Testimony should be given to the Minister of the Particulars certified: and that upon Marriage by Licence, the Documents should specify the Time and Place of the Birth of the Parties, confirmed by Registers or other suitable Certificates, or that the Officer should have some other authentic Testimony of their being of the requisite Age; and that all such Consents as are required by Law, should be registered with the other Documents necessary for obtaining the Licence.

The Exemption of Marriages in Scotland being subject to such great Abuse, it would be an easy Remedy to prohibit all such Marriages as are at present irregular, and as such subject to Punishment. This would have the Effect of preventing an Engagement, in the Certainty of which so many Interests may be involved from depending upon the Precariousness of verbal Evidence, and would also prevent a Party from being involved by Presumptions in an Engagement which it was never his intention to contract. It might be of some public Benefit in facilitating the Evidence of Marriages after the Death of the Parties, if a particular Part of the Parish Registers were appropriated to the Entry of Minutes of Reference respecting Marriages contracted elsewhere.

By an Act of the Irish Parliament, 9 Geo. II. c. 11. Marriages are prohibited of Minors, without the Consent, in Writing, of the Father or Guardian, or, in Case no Guardian is appointed, of the Lord Chancellor, if either of the Parties is entitled to a real Estate of the Value of £100 per Annum, or a personal Estate of the Value of £500,—or if either of the Parents of the Minor is entitled to a real Estate of the Value of £100 per Annum, or a personal Estate of the Value of £2000;—but if no Suit is instituted by the Father or Guardian, or a Person appointed by the Lord Chancellor, for the Purpose of annulling the Marriage, within one Year after it is contracted, it is to be deemed good. By Stat. 23 Geo. II c. 10, Ir. Provisions are made for the Removal of certain Difficulties with Respect to such Suits.—See 1 Gabb. 404.

No. 6.

12 Geo. III. c. 11.—An Act for better regulating the future Marriages of the Royal Family.

Most Gracious Sovereign,

12 Geo. III. c. 11. 'WHEREAS your Majesty, from your Paternal Affection to 'your own Family, and from your Royal Concern for the future Welfare of your People, and the Honour and Dignity of your 'Crown, was graciously pleased to recommend to your Parliament to 'take into their serious Consideration, Whether it might not be wise 'and expedient to supply the Defect of the Laws now in being, and, 'by some new Provision, more effectually to guard the Descendants of 'his late Majesty King George the Second (other than the Issue of 'Princesses who have married, or may hereafter marry, into Foreign 'Families) from marrying without the Approbation of your Majesty, 'your Heirs or Successors, first had and obtained; we have taken this 'weighty Matter into our serious Consideration; and, being sensible 'that Marriages in the Royal Family are of the highest Importance to 'the State, and that therefore the Kings of this Realm have ever been 'entrusted with the Care and Approbation thereof; and being 'thoroughly convinced of the Wisdom and Expediency of what your 'Majesty has thought fit to recommend, upon this Occasion, we, 'your Majesty's most dutiful and loyal Subjects the Lords Spiritual 'and Temporal, and Commons, in this present Parliament assembled, 'do humbly beseech your Majesty, that it may be enacted;' and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That no Descendant of the Body of his late Majesty King George the Second, Male or Female, (other than the Issue of Princesses who have married, or may hereafter marry, into Foreign Families) shall be capable of contracting Matrimony without the previous Consent of his Majesty, his Heirs or Successors, signified under the Great Seal, and declared in Council (which Consent, to preserve the Memory thereof, is hereby directed to be set out in the Licence and Register of Marriage, and to be entered in the Books of the Privy Council); and that every Marriage, or Matrimonial Contract, of any such Descendant, without such Consent first had and obtained, shall be null and void, to all Intents and Purposes whatsoever.

No Descendant of Geo. II (other than, &c.) capable of contracting Matrimony without Consent, &c.

II. Provided always, and be it enacted by the Authority aforesaid, That in case any such Descendant of the Body of his late Majesty King George the Second, being above the Age of Twenty-five Years, shall persist in his or her Resolution to contract a Marriage disapproved of, or dissented from, by the King, his Heirs or Successors; that then such Descendant, upon giving Notice to the King's Privy Council, which Notice is hereby directed to be entered in the Books thereof, may, at any Time from the Expiration of Twelve Calendar Months after such Notice given to the Privy Council as aforesaid, contract such Marriage; and his or her Marriage with the Person before proposed, and rejected, may be duly solemnized, without the previous Consent of his Majesty, his Heirs or Successors; and such Marriage shall be good, as if this Act had never been made, unless both Houses of Parliament shall, before the Expiration of the said Twelve Months, expressly declare their Disapprobation of such intended Marriage.

III. And be it further enacted by the Authority aforesaid, That every Person who shall knowingly or wilfully presume to solemnize, or to assist, or to be present at the Celebration of any Marriage with any such Descendant, or at his or her making any Matrimonial Contract, without such Consent as aforesaid first had and obtained, except in the Case above mentioned, shall, being duly convicted thereof, incur and suffer the Pains and Penalties ordained and provided by the Statute of Provision and Premunire made in the sixteenth Year of the Reign of RICHARD the Second.

No 6. 12 Geo. III. c. 11. Persons who shall wilfully assist, &c. incur the Penalties provided by 16 Rich. II.

No. 7.

44 Geo. III. c. 77.—An Act to render valid certain Marriages solemnized in certain Churches and publick Chapels in which Banns had not usually been published before or at the Time of passing an Act, made in the Twenty-sixth Year of the Reign of his late Majesty King GEORGE the Second, intitutled, *An Act for the better preventing of clandestine Marriages.*

[*14th July*, 1804.]

'WHEREAS, since the making of an Act, passed in the twenty-'sixth Year of the Reign of his late Majesty King GEORGE 'the Second, intituled, *An Act for the better preventing of clandestine Marriages*; and also of an Act, passed in the twenty-first 'Year of the Reign of his present Majesty, intituled, *An Act to 'render valid certain Marriages solemnized in certain Churches and 'publick Chapels in which Banns had not usually been published 'before or at the Time of passing an Act, made in the twenty-sixth 'Year of King* GEORGE *the Second*, intituled '*An Act for the better 'preventing of clandestine Marriages*,' divers Churches and Chapels 'have been erected and built within that Part of *Great Britain* called '*England*, *Wales*, and Town of *Berwick-upon-Tweed*, which have 'been duly consecrated, and divers Marriages have been solemnized 'therein since the passing of the said last mentioned Act; but, by 'reason that in such Churches and Chapels Banns of Matrimony had 'not usually been published before or at the Time of passing the said 'first mentioned Act, such Marriages have been or may be deemed to 'be void: May it therefore please your Majesty that it may be 'enacted;' and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all Marriages already solemnized, or to be solemnized before the twenty-fifth Day of *March* One Thousand Eight Hundred and Five, in any Church or publick Chapel in that Part of *Great Britain* called *England*, *Wales*, and the Town of *Berwick-upon-Tweed*, erected since the making of the said Act of the twenty-sixth Year of the Reign of his late Majesty King GEORGE the Second, and consecrated, shall be as good and valid in Law as if such Marriages had been solemnized in Parish Churches, or publick Chapels having Chapelries annexed, and wherein Banns had usually been published before or at the Time of passing the said last mentioned Act.

44 Geo. III. c. 77. 26 Geo. II. c. 33. 21 Geo. III. c. 53.

Marriages in Churches or Chapels erected since 26 G. solemnized before March 25, 1805, declared valid.

II. And be it further enacted by the Authority aforesaid, That all Parsons, Vicars, Ministers, and Curates, who, before the said twenty-fifth Day of *March* One Thousand Eight Hundred and Five, shall have solemnized any of the Marriages which are hereby enacted

Ministers having solemnized such Marriages indemnified.

No. 7.
44 Geo. III. c. 77.

to be valid in Law, shall be and they are hereby indemnified against the Penalties inflicted by the said Act of the twenty-sixth Year of the Reign of his said late Majesty King GEORGE the Second, upon Persons who shall solemnize Marriages in any other Place than a Church or publick Chapel in which Banns had been usually published before or at the Time of passing the said last mentioned Act.

Registers of such Marriages shall be received as Evidence.

III. And be it further enacted by the Authority aforesaid, That the Registers of Marriages solemnized or to be solemnized in the said Churches or Chapels, which are hereby enacted to be valid in Law, or Copies thereof, shall be received in all Courts of Law and Equity as Evidence of such Marriages, in the same Manner as the Registers of such Marriages solemnized in Parish Churches or publick Chapels in which Banns were usually published before or at the Time of passing the said Act of the twenty sixth Year of the Reign of his said late Majesty King GEORGE the Second, or Copies thereof, are received in Evidence: Provided nevertheless that in all such Courts the same Objections shall be available to the receiving such Registers or Copies in Evidence, as would have been available to the receiving the same as Evidence, if such Registers or Copies had related to Marriages mentioned in such last mentioned Parish Churches or publick Chapels as aforesaid.

Registers of Marriages solemnized in Chapels, shall be removed to Parish Churches adjoining.

IV. And be it further enacted by the Authority aforesaid, That the Registers of all Marriages solemnized in any publick Chapels, which are hereby enacted to be valid in Law, shall, within fourteen Days next after the said twenty-fifth Day of *March* One Thousand Eight Hundred and Five, be removed to the Parish Church of the Parish in which such Chapel shall be situated, and in case such Chapel shall be situated in an Extra-parochial Place, then to the Parish Church next adjoining to such Extra-parochial Place, to be kept with the Marriage Registers of such Parish, and in like Manner as Parish Registers are directed to be kept by the said Act of the twenty-sixth Year of the Reign of his said late Majesty King GEORGE the Second.

No. 8.

P. 48 Geo. III. c. 127.—An Act to render valid certain Marriages solemnized in certain Churches and publick Chapels in which Banns had not usually been published before or at the Time of passing an Act made in the Twenty-sixth Year of the Reign of his late Majesty King GEORGE the Second, intituled, *An Act for the better preventing of Clandestine Marriages.*

[*30th June,* 1808.]

48 G. III. c. 127

" Recital of Acts, 26 *G. II. c.* 33; 21 *G. III. c.* 53; 14 *G. III. c.* 77;
" Marriages solemnized before *August* 23, 1808, in any Church or
" Chapel in *England, Wales,* or *Berwick,* duly consecrated, de-
" clared valid, § 1.—Ministers who shall have solemnized such Mar-
" riages indemnified against Penalties under 26 *G. II. c.* 33.—§ 2.
" Registers of such Marriages shall be received in Evidence § 3.
" [*See* 44 *G. III. c.* 77, § 1, 2, 3."]

* Registers of Marriages so solemnized in Chapels shall be removed to Parish Churches, &c and thence transmitted to the Bishop.

IV. And be it further enacted by the Authority aforesaid, That the Registers of all Marriages solemnized in any publick Chapels which are hereby enacted to be valid in Law, shall, within Thirty Days next after the Twenty-third Day of *August,* One Thousand Eight Hundred and Eight, be removed to the Parish Church of the

Parish in which such Chapel shall be situated; and in case such Chapel shall be situated in an Extra-parochial Place, to be kept with the Marriage Registers of such Parish, and in like Manner as Parish Registers are directed to be kept by the said recited Act, made in the Twenty-sixth Year of the Reign of his said late Majesty King GEORGE the Second, and within Twelve Months after the Removal of such Registers to such Parish Churches respectively, Two Copies thereof respectively shall be transmitted by the respective Churchwardens of such Parishes to the Bishop of the Diocese, or his Chancellor, subscribed by the Hands of the Minister and Churchwardens of such Parishes respectively, to the End that the same may be faithfully preserved in the Registry of the said Bishop.

No. 8.
48 G. III. c. 127.

No. 9.

51 Geo. III. c. 37.—An Act further to prevent the Marriage of Lunatics. [31st *May*, 1811.]

51 G. III c. 37.

WHEREAS an Act was made in the Parliament of *Great Britain*, in the Fifteenth Year of the Reign of his late Majesty King GEORGE the Second, to prevent the Marriage of Lunatics: And whereas it is expedient that the Provisions of the said Act should be extended to *Ireland*; be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the Expiration of Ten Days after the passing of this Act, in case any Person who has been, or at any Time hereafter shall be found a Lunatic by any Inquisition taken or to be taken by virtue of a Commission under the Great Seal of *Great Britain*, or the Great Seal of *Ireland* respectively, or any Lunatic or Person under a Phrenzy, whose Person and Estate by virtue of any Act of Parliament now or hereafter shall be committed to the Care and Custody of particular Trustees, shall marry before he or she shall be declared of sane Mind by the Lord High Chancellor of *Great Britain* or *Ireland*, or the Lord Keeper or Lords Commissioners of the Great Seal of *Great Britain* or *Ireland* for the Time being, or such Trustees as aforesaid, or the major Part of them respectively, as the Nature of the Case shall require, every such Marriage shall be and is hereby declared to be null and void to all Intents and Purposes whatsoever.

Persons found Lunatic marrying before declared sane, Marriage to be void.

PART I. CLASS IV.

PARENT & CHILD.

No. 1.

Statute of Merton, 20 Henry III. c. 9.—He is a Bastard who is born before the Marriage of his Parents.

Statute of Merton. 20 H. III. c. 9.

Fitz. Bastardy, 21, 22, 25, 27, 28 30, 33 1 H 6, 3. 11 H. 4, 84 39 Ed. 3, 14 44 Ed. 3, 12. 15 Co. 72.

'TO the King's Writ of Bastardy, Whether one being 'born before Matrimony may inherit in like Manner as he that 'is born after Matrimony, all the 'Bishops answered, That they 'would not, nor could not, answer to it; because it was directly against the common Order of 'the Church. And all the Bishops 'instanted the Lords, that they 'would consent, that all such as 'were born afore Matrimony 'should be legitimate, as well as 'they that be born after Matrimony, as to the Succession of 'Inheritance, forasmuch as the 'Church accepteth such for legitimate. And all the Earls and 'Barons with one voice answered, 'That they would not change the 'Laws of the Realm, which 'hitherto have been used and 'approved.'

2 Inst. 96.

AD breve [domini] R. de Bastardia, utrum aliquis natus ante matrimonium habere poterit hereditatem, sicut ille qui natus est post, Responderunt omnes Episcopi, quod nolunt, nec possunt, ad istud respondere; quia hoc esset contra communem formam ecclesie. Ac rogaverunt omnes Episcopi Magnates, ut consentirent, quod nati ante matrimonium essent legitimi, sicut illi qui nati sunt post matrimonium, quantum ad successionem hereditariam, quia ecclesia tales habet pro legitimis. Et omnes Comites & Barones una voce responderunt, quod nolunt leges Anglie mutare, que usitate sunt, & approbate. (1)

BASTARDS.

(1) While we applaud, with the most perfect Sincerity, the manly Independence of our Ancestors, who, in the true Spirit of Wisdom, pronounced this memorable Answer, we cannot but regret, that many of their Posterity have drawn Inferences from it, which the Premises were by no Means competent to support—and from the mere Refusal to adopt a particular Maxim of foreign Law, in Deference and Submission to the then Established Church; the general Law, of which this Maxim constituted a Part, was considered of so dangerous and obnoxious a Character, that the mere Knowledge of it was almost considered as dangerous and infectious—and that it was impossible to resort to its Assistance for Hints of Practicable Improvement, with due Regard to Adaptation and a discriminating Judgment, without necessarily inducing an implicit Submission to its Authority, in Matters prejudicial and inapplicable. I do not conceive that the Prejudice still subsists, in the same Form and Shape—but it certainly does in another, which is that to stick to Comyns' Digest, Tidd's Practice, and the Index to the Term Reports, as a much more commodious Method of cultivating legal Science, than that of taking a more

excursive Range for the Purpose of cultivating the general Principles of judicial Reasoning. No. 1. 20 H. VIII. c. 9.

Upon the immediate Subject of the particular Law before us, I apprehend that almost every unprejudiced Mind will concur in the Opinion of its Wisdom and good Sense, in disapproving the Principle of permitting the Character of Family Relations to depend upon Retrospect and Fiction; and in regarding the open Celebration of Marriage as a Pledge between the Individuals and Society, with Respect to the Character of the future Offspring.

Evident, however, as this Opinion appears to be, the Generality with which the opposite Doctrine has been adopted, in the different States of Europe, is very remarkable.—It being not only admitted in the ancient Systems, which may be supposed to have been influenced by that Deference which our Ancestors withstood, but retained in the reformed Establishment of Scotland, and in the modern Codes of Prussia and France, the latter of which, in Matters where no Motives of political Influence could intervene, presents a System which the warmest Opponents of the Government by which it was established, may contemplate with Approbation.

A recent Instance occurred of a very striking Application by the House of Lords to the Doctrine of Legitimation, by subsequent Marriage according to the Law of Scotland, in a Case of M'Adam v Walker, 1 Dow. 148, in which it appeared, that a Party calling his Domestics together, presented to them a Woman with whom he cohabited as a Mistress, and his Children by her, as being his Wife and legitimate Children, and afterwards, on the same Day, shot himself.

There is another Subject partly connected with the Law before us, of no inconsiderable Importance; the repudiating the Filiation of Children born in Marriage, in Consequence of the Absence of the Husband from the Wife.—The Cases upon this Subject will be particularly adverted to in a Note on the Title, *Bastards,* in the Division of this Collection which relates to the Office of Justices of Peace.

No. 2.

1 Anne, c. 30.—An Act to oblige the Jews to maintain and provide for their Protestant Children.

TO the End that sufficient Maintenance be provided and allowed for the Children of Jewish Parents, who shall turn Protestants; be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the twenty-fourth Day of *June* One Thousand Seven Hundred and Two, if any Jewish Parent, in order to the compelling of his or her Protestant Child to change his or her Religion, shall refuse to allow such Child a fitting Maintenance, suitable to the Degree and Ability of such Parent, and to the Age and Education of such Child, then (upon Complaint thereof made to the Lord High Chancellor of *England,* or Lord Keeper of the Great Seal, or Commissioners for the Great Seal for the Time being) it shall and may be lawful for the said Lord Chancellor, Lord Keeper, or Commissioners, to make such Order therein, for the Maintenance of such Protestant Child, as he or they shall think fit. (1) 1 Anne, c. 30.

(1) In Vincent v. Famandez, 1 P. Wms. 524, a strong Opinion was expressed that this Act may be applied to a Case where the Child is Forty Years of Age, and the Father Dead, but no Decision was made.

Part I. Class V.

CORPORATIONS.

(Including Statutes relating to the Universities and to Proceedings by Mandamus and Quo. Warrants.)

No. 1.

19 Henry VII. c. 7.—For making of Statutes by Bodies incorporate.

19 Hen. VII. c 7
Hob. 210.
15 H. 6 c. 6

'PRAYEN the Commons in this present Parliament assembled, 'That where in a Parliament holden at *Westminster* the Fifteenth 'Year of the Reign of the blessed King Henry the Sixth, for 'that, Masters, Wardens, and People of Guilds, Fraternities, and 'other Companies Corporate, dwelling in divers Parts of the Realm, 'oftentimes by Colour of Rule and Governance to them granted and 'confirmed by Charters and Letters Patents of divers Kings, made 'among themselves many unlawful and unreasonable Ordinances, as 'well in Prices of Wares as other Things, for their own singular 'Profit, and to the common Hurt and Damage of the People: It 'was enacted, That there should from henceforth no such Masters, 'Wardens, nor Companies, make nor use no Ordinance in Disherit-'ance or Diminution of the Prerogative of the King, nor of other, nor 'against the common Profit of the People, nor none other Ordinance 'of Charge make and use, but if it were first discussed and proved by 'good and reasonable Advice by the Justices of the Peace, or the chief 'Governors of Cities, and before them entered of Record, and that 'upon Pain to lose and forfeit the Force and the Effect of all the 'Articles in their said Letters Patents and Charters contained con-'cerning the same, and over that to lose and pay Ten Pounds to the 'King for every Ordinance that any of them made or used to the con-'trary; and this Ordinance to endure at the King's Pleasure, as in the 'same Act it appeareth; which Act is now expired, and sith the ex-'piring of the same, divers and many Ordinances have been made by 'many and divers private Bodies Corporate within Cities, Towns, and 'Boroughs, contrary to the King's Prerogative, his Laws, and the 'Common Weal of his Subjects:' Be it therefore ordained, establish-ed, and enacted by the King our Sovereign Lord, by the Advice of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, That no Masters, Wardens, and Fellowships of Crafts or Mysteries, nor any of them, nor any Rulers of Guilds or Fraternities, take upon them to make any Acts or Ordinances, ne to execute any Acts or Ordinances by them heretofore made, in Disheritance or Diminution of the Prerogative of the King, nor of other, nor against the common Profit of the People, but that the same Acts or Ordinances be examined and approved by the Chancellor, Treasurer of *England*, or Chief Justices of either Benches, or Three of them, or before both the Justices of

Enforced by 22 H. 8. c. 4.

No Masters or Wardens of Fellowships shall make any new Ordinances without the Consent of the Chancellor, Treasurer, or Justices. 28 H. 8. c. 5.

Assize in their Circuit or Progress in that Shire where such Acts or Ordinances be made, upon Pain of Forfeiture of Ten Pounds for every Time that they do contrary. And over that it is enacted, That none of the same Bodies Corporate take upon them to make any Acts or Ordinances to restrain any Person or Persons to sue to the King's Highness, or to any of his Courts, for due Remedy to be had in their Causes, ne put ne execute any Penalty or Punishment upon any of them for any such Suit to be made, upon Pain of Forfeiture of Ten Pounds for every Time that they do the contrary. And this Act to begin and take Effect at the Feast of *Pentecost* next coming, and from thenceforth. (1)

No. 1. 19 Hen. VII. c. 7.

No Order shall be made to restrain Suits in the King's Court.

(1) If a By-law be lawful and reasonable, it will be good though it be not confirmed or allowed according to this Statute, 5 C. 63. 6. 1 Rol. 363. l. 35. although it cannot be executed without incurring the Penalty of the Statute, vi. 11 Co. 5. 6. The Statute only extends to Guilds, Fraternities, &c. not to Cities or Boroughs, per. att. Quo. War. 44.

No. 2.

13 Eliz. c. 29.—An Act concerning the several Incorporations of the Universities of *Oxford* and *Cambridge*, and the Confirmation of the Charters, Liberties and Privileges granted to either of them.

13 Eliz.

FOR the great Love and Favour that the Queen's most excellent Majesty beareth towards her Highness Universities of *Oxford* and *Cambridge*, and for the great Zeal and Care that the Lords and Commons of this present Parliament have for the Maintenance of good and godly Literature, and the virtuous Education of Youth within either of the said Universities, and to the Intent that the ancient Privileges, Liberties and Franchises of either of the said Universities heretofore granted, ratified and confirmed by the Queen's Highness, and her most noble Progenitors, may be had in greater Estimation, and be of greater Force and Strength, for the better Increase of Learning, and the further Suppressing of Vice: Be it therefore enacted by the Authority of this present Parliament, That the Right Honourable *Robert* Earl of *Leicester*, now Chancellor of the said University of *Oxford*, and his Successors for ever, and the Masters and Scholars of the same University of *Oxford* for the Time being, shall be incorporated and have a perpetual Succession in Fact, Deed and Name, by the Name of the Chancellor, Masters and Scholars of the University of *Oxford*; and that the same Chancellor, Masters and Scholars of the same University of *Oxford*, for the Time being, from henceforth, by the Name of Chancellor, Masters and Scholars of the University of *Oxford*, and by none other Name or Names, shall be called and named for evermore; and that they shall have a common Seal to serve for their necessary Causes touching and concerning the said Chancellor, Masters and Scholars of the said University of *Oxford*, and their Successors: And likewise that the Right Honourable Sir *William Cecil*, Knt. Baron of *Burghley*, now Chancellor of the said University of *Cambridge*, and his Successors for ever, and the Masters and Scholars of the same University of *Cambridge* for the Time being, shall be incorporated and have a perpetual Succession in Fact, Deed and Name, by the Name of the Chancellor, Masters and Scholars of the University of *Cambridge*, and that the same Chancellor, Masters and Scholars

No. 2.
13 Eliz. c. 29.

of the said University of *Cambridge*, for the Time being, from henceforth, by the Name of Chancellor, Masters and Scholars of the University of *Cambridge*, and by no other Name or Names, shall be called and named for evermore; and that they shall have a common Seal to serve for their necessary Causes touching and concerning the said Chancellor, Masters and Scholars of the said University of *Cambridge*, and their Successors: And further, that as well the Chancellor, Masters and Scholars of the said University of *Oxford*, and their Successors, by the Name of Chancellor, Masters and Scholars of the University of *Oxford*, as the Chancellor, Masters and Scholars of the said University of *Cambridge*, and their Successors, by the Name of Chancellor, Masters and Scholars of the University of *Cambridge*, may severally implead and be impleaded, and sue and be sued for all manner of Causes, Quarrels, Actions Real, Personal and Mixt, of whatsoever Kind, Quality or Nature they be, and shall and may challenge and demand all manner of Liberties and Franchises, and also answer and defend themselves under and by the Name aforesaid, in the same Causes, Quarrels and Actions, for every Thing and Things whatsoever, for the Profit and Right of either of the aforesaid Universities, to be done before any manner of Judge, either Spiritual or Temporal, in any Courts and Places within the Queen's Highness Dominions whatsoever they be: And be it further enacted by the Authority aforesaid, That the Letters Patents of the Queen's Highness most noble Father King Henry the Eighth, made and granted to the Chancellor and Scholars of the said University of *Oxford*, bearing Date the First Day of *April* in the Fourteenth Year of his Reign, and the Letters Patents of the Queen's Majesty that now is, made and granted unto the Chancellor, Masters and Scholars of the University of *Cambridge*, bearing Date the Twenty-sixth Day of *April* in the Third Year of her Highness most gracious Reign, and also all other Letters Patents, by any of the Progenitors or Predecessors of our said Sovereign Lady, made to either of the said corporated Bodies severally, or to any of their Predecessors, of either of the said Universities, by whatsoever Name or Names the said Chancellor, Masters and Scholars of either of the said Universities, in any of the said Letters Patents, have been heretofore named, shall from henceforth be good, effectual and available in the Law to all Intents, Constructions and Purposes, to the foresaid now Chancellor, Masters and Scholars of either of the said Universities and to their Successors for evermore, after and according to the Form, Words, Sentences and true Meaning of every of the same Letters Patents, as amply, fully and largely, as if the same Letters Patents were recited *verbatim* in this present Act of Parliament; any Thing to the contrary in anywise notwithstanding. And furthermore be it enacted by the Authority aforesaid, That the Chancellor, Masters and Scholars of either of the said Universities, severally, and their Successors for ever, by the same Name of Chancellor, Masters and Scholars of either of the said Universities of *Oxford* and *Cambridge*, shall and may severally have, hold, possess, enjoy and use to them, and to their Successors for evermore, all manner of Manors, Lordships, Rectories, Parsonages, Lands, Tenements, Rents, Services, Annuities, Advowsons of Churches, Possessions, Pensions, Portions and Hereditaments, and all manner of Liberties, Franchises, Immunities, Quietances and Privileges, View of Frank-pledge, Law-days, and other Things whatsoever they be, the which either of the said corporated Bodies of either of the said Universities had, held, occupied or enjoyed, or of Right ought to have had, used, occupied and enjoyed, at any Time or Times before the making of this Act of Parliament, according to the true Intent and Meaning as well of the said Letters Patents made by the said noble Prince King Henry the

Eighth, made and granted to the Chancellor and Scholars of the University of *Oxford*, bearing Date as is aforesaid, as of the Letters Patents of the Queen's Majesty made and granted unto the Chancellor, Masters and Scholars of the University of *Cambridge*, bearing Date as aforesaid, and as according to the true Intent and Meaning of all the other the foresaid Letters Patents whatsoever; any Statute or other Thing or Things whatsoever heretofore made or done to the contrary in any manner of wise notwithstanding. And be it further enacted by the Authority aforesaid, That all manner of Instruments, Indentures, Obligations, Writings Obligatory and Recognizances, made or knowledged by any Person or Persons or Body Corporate, to either of the said corporated Bodies of either of the said Universities, by what Name or Names soever the said Chancellor, Masters and Scholars of either of the said Universities have been heretofore called in any of the said Instruments, Indentures, Obligations, Writings Obligatory or Recognizances, shall be from henceforth available, stand and continue of good, perfect and full Force and Strength to the now Chancellor, Masters and Scholars of either of the said Universities, and to their Successors, to all Intents, Constructions and Purposes, although they or their Predecessors, or any of them, in any of the said Instruments, Indentures, Obligations, Writings Obligatory or Recognizances, be named by any Name contrary or diverse to the Name of the now Chancellor, Masters and Scholars of either of the said Universities. And be it also enacted by the Authority aforesaid, That as well the said Letters Patents of the Queen's Highness said Father King HENRY the Eighth, bearing Date as is before expressed, made and granted to the said Corporate Body of the said University of *Oxon*, as the Letters Patents of the Queen's Majesty aforesaid granted to the Chancellor, Masters and Scholars of the University of *Cambridge*, bearing Date as aforesaid, and all other Letters Patents by any of the Progenitors or Predecessors of her Highness, and all manner of Liberties, Franchises, Immunities, Quietances and Privileges, Letes, Law-days, and other Things whatsoever therein expressed, given or granted to the said Chancellor, Masters and Scholars of either of the said Universities, or to any of their Predecessors of either of the said Universities, by whatsoever Name the said Chancellor, Masters and Scholars of either of the said Universities in any of the said Letters Patents be named, be and by Virtue of this present Act shall be from henceforth ratified, stablished and confirmed unto the said Chancellor, Masters and Scholars of either of the said Universities, and to their Successors for ever; any Statute, Law, Usage, Custom, Construction or other Thing to the contrary in any wise notwithstanding. Saving to all and every Person and Persons, and Bodies Politick and Incorporate, their Heirs and Successors, and the Heirs and Successors of every of them, other than to the Queen's Majesty, her Heirs and Successors, all such Rights, Titles, Interests, Leases, Entries, Conditions, Charges and Demands, which they and every of them had, might or should have had, of, in or to any the Manors, Lordships, Rectories, Parsonages, Lands, Tenements, Rents, Services, Annuities, Advowsons of Churches, Pensions, Portions, Hereditaments and all other Things in the said Letters Patents, or in any of them mentioned or comprised, by Reason of any Right, Title, Charge, Interest or Condition to them or any of them, or to the Ancestors or Predecessors of them or any of them, devolute or grown before the several Dates of the said Letters Patents, or by Reason of any Gift, Grant, Demise or other Act or Acts, at any Time made or done between the said Chancellor, Masters and Scholars of either of the said Universities of *Cambridge* and *Oxford*, or any of them, and others, by what Name and Names soever the same were made and done, in like Manner and Form as they and

No. 2.
13 Eliz. c. 29.

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13 Eliz. c. 29.

every of them had or might have had the same before the making of this Act; any Thing, &c. Provided always, and be it enacted by the Authority aforesaid, That this Act, or any Thing therein contained, shall not extend to the Prejudice or Hurt of the Liberties and Privileges of Right belonging to the Mayors, Bailiffs and Burgesses of the Town of *Cambridge* and City of *Oxford*; but that they the said Mayors, Bailiffs and Burgesses, and every of them, and their Successors, shall be and continue free in such Sort and Degree, and enjoy such Liberties, Freedoms and Immunities, as they or any of them lawfully may or might have done before the making of this present Act; any Thing contained in this present Act to the contrary notwithstanding.

No. 3.

31 Elizabeth, c. 6.—An Act against Abuses in Election of Scholars, and Presentation to Benefices.

[Inserted ante Class II. No. 7.]

No. 4.

13 Charles II. c. 1.—An Act for the well governing and regulating of Corporations

13 Car. II. c. 1. 19 H. VII. c. 7. See 2 Bur. 1015. Cowp. 382. 393, 540.

'WHEREAS Questions are likely to arise concerning the Validity 'of Elections of Magistrates, and other Officers and Members 'in Corporations, as well in Respect of removing some, as placing 'others, during the late Troubles, contrary to the true Intent and 'Meaning of their Charters and Liberties: And to the End that the 'Succession in such Corporations may be most probably perpetuated 'in the Hands of Persons well affected to his Majesty and the 'established Government, it being too well known, that notwithstanding all his Majesty's Endeavours, and unparalleled Indulgence 'in pardoning all that is past, nevertheless many evil Spirits are still 'working:'

Commissions to issue for England, Wales, & Berwick.

II. Wherefore, for Prevention of the like Mischief for the Time to come, and for Preservation of the publick Peace, both in Church and State, be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, assembled in Parliament, and by the Authority of the same, That Commissions shall, before the Twentieth Day of *February* next, be issued forth under the Great Seal of *England*, unto such Persons as his Majesty shall appoint for the executing of the Powers and Authorities herein-after expressed: And that all and every the Persons to be named Commissioners in the said Commissions respectively, shall by Virtue of this Act be Commissioners respectively, for and within the several Cities, Corporations, and Boroughs, and Cinque Ports, and their Members, and other Port Towns within the Kingdom of *England*, Dominion of *Wales*, and Town of *Berwick-upon-Tweed*, for which they shall be respectively nominated and appointed.

Corporation Charters saved.

III. And be it further enacted by the Authority aforesaid, That no Charter of any Corporation, Cities, Towns, Boroughs, Cinque Ports, and their Members, and other Port Towns in *England* or *Wales*, or Town of *Berwick-upon-Tweed*, shall at any Time hereafter be avoided, for or by Reason of any Act or Thing done, or omitted to be done, before the First Day of this present Parliament.

IV. And be it further enacted by the Authority aforesaid, That all Persons who upon the Four and Twentieth Day of *December*, One Thousand Six Hundred Sixty and One, shall be Mayors, Aldermen, Recorders, Bailiffs, Town Clerks, Common Council-men, and other Persons then bearing any Office or Offices of Magistracy, or Places, or Trusts, or other Imployment relating to or concerning the Government of the said respective Cities, Corporations, and Boroughs, and Cinque Ports, and their Members, and other Port Towns, shall at any Time before the Five and Twentieth Day of *March*, One Thousand Six Hundred Sixty and Three, when they shall be thereunto required by the said respective Commissioners, or any three or more of them, take the Oaths of Allegiance and Supremacy, and this Oath following:

No. 4.
13 Car. II. c. 1.
Magistrates to take and subscribe to certain Oaths.
Oaths of Allegiance and Supremacy.

V. I *A. B.* do declare and believe, That it is not lawful, upon any Pretence whatsoever, to take Arms against the King; and that I do abhor that traiterous Position of taking Arms by his Authority against his Person, or against those that are commissioned by him: So help me God.'

The Oath to be taken.

VI. And also at the same Time shall publickly subscribe, before the said Commissioners, or any three of them, this following Declaration.

Sections 5 & 6 repealed by 5 G. I. c. 6 § 2.

'I *A. B.* do declare, That I hold that there lies no Obligation upon 'me or any other Person, from the Oath commonly called, *The 'Solemn League and Covenant*; and that the same was in itself an 'unlawful Oath, and imposed upon the Subjects of this Realm against 'the known Laws and Liberties of the Kingdom.'

The Declaration to be subscribed.

VII. And that all such of the said Mayors and other the Persons aforesaid, by whom the said Oaths are to be taken, and Declaration subscribed as aforesaid, who shall refuse to take and subscribe the same within the Time and in Manner aforesaid, shall, from and immediately after such Refusal, be by Authority of this Act *(ipso facto)* removed and displaced of and from the said Offices and Places respectively; and the said Offices and Places from and immediately after such Refusal, shall be and are hereby declared and adjudged to be void to all Intents and Purposes, as if the said respective Persons so refusing, were naturally dead.

Those who refuse the Oaths removed.

VIII. And nevertheless, Be it further enacted by the Authority aforesaid, That the said Commissioners, or any Five or more of them, shall have full Power by Virtue of this Act, by Order and Warrant under their Hands and Seals, to displace or remove any of the Persons aforesaid from the said Offices and Places, or Trusts aforesaid, if the said Commissioners, or the major Part of them then present, shall deem it expedient for the publick Safety, although such Persons shall have taken and subscribed, or be willing to take and subscribe, the said Oath and Declaration.

Commissioners have Power to remove any at their Wills, though they offer to take the Oaths.

IX. And be it also enacted, That the said respective Commissioners, or any five or more of them, as aforesaid, shall have Power to restore such Person or Persons as have been illegally or unduly removed; and also to put and place into the Offices and Places which by any of the Ways aforesaid shall be void respectively, some other Person or Person then being or which have been Members or Inhabitants of the said respective Cities, Corporations and Boroughs, and Cinque Ports and their Members, and other Port-Towns; who shall, before the said respective Commissioners, or any three or more of them, take the said Oaths of Obedience and Supremacy, and the said other Oath, and subscribe the Declaration herein-before particularly mentioned, and that the said Persons, from and after the taking the said Oaths, and subscribing the said Declaration, shall hold and enjoy

T[illegible] Power to rest[illegible] any Magistrate unduly moved.

No. 4.
13 Car. II. c. 1.

and be vested in, the said Places and Offices, as if they had been duly elected and chosen according to the Charters and former Usages of the said respective Cities, Corporations, and Boroughs, Cinque Ports and their Members, and other Port-Towns

Commissioners impowered to give the Oaths.

X. And be it further enacted by the Authority aforesaid, That the said respective Commissioners, or any three or more of them respectively, shall have Power, during the Continuance of their respective Commissions, to administer the Oaths aforesaid, and tender the said Declaration, to the said Persons hereby required to take and subscribe the same; and from and after the Expiration of the said respective Commissions, the said Three Oaths and Declaration shall be from Time to Time administered and tendered to such Person and Persons, who by the true Meaning of this Act, or any Clause therein contained, are to take the same, by such Person or Persons respectively, who by the Charters or Usages of the said respective Cities, Corporations, and Boroughs, and Cinque Ports and their Members, and other Port Towns, ought to administer the Oath for due executing the said Places or Offices respectively; and in Default of such, by Two Justices of the Peace of the said Cities, Corporations, and Boroughs, and Cinque Ports and their Members, and other Port Towns, for the Time being, if any such there be, or otherwise by Two Justices of the Peace for the Time being, of the respective Counties where the said Cities, Corporations or Boroughs, or Cinque Ports or their Members, or other Port Towns are.

Who shall give the Oath after the Commissions are determined.

The Commissioners to keep Remembrances.

XI. And be it likewise enacted by the Authority aforesaid, That the said Commissioners, Justices of the Peace, and other Persons hereby authorized to administer the said Oaths and tender the said Declaration respectively, shall cause *Memorandums* or Entries to be made of all Oaths taken before them, and Subscriptions made as aforesaid, and deliver the same Once in a Year to the respective Town-Clerks or other Register or Clerk of the said respective Cities, Corporations and Boroughs, and Cinque Ports and their Members, and other Port-Towns, who shall cause the same to be fairly entered into the Books or Registers belonging to the said respective Cities, Corporations and Boroughs, or Cinque Ports and their Members, or other Port-Towns.

and give them to the Town-Clerks, &c.

None to be a Magistrate unless he take the Oaths and receive the Sacrament.
Farther Provisions relating hereto, 5 Geo. I. c. 6. § 3.
Cowp. 540.
3 Lev. 116
2 Ves 247, 248.

XII. Provided also, and be it enacted by the Authority aforesaid, That from and after the Expiration of the said Commissions, no Person or Persons shall for ever hereafter be placed, elected or chosen, in or to any the Offices or Places aforesaid, that shall not have, within One Year next before such Election or Choice, taken the Sacrament of the Lord's Supper, (1) according to the Rites of the Church of *England*; and that every such Person and Persons so placed, elected or chosen, shall likewise take the aforesaid Three Oaths, and subscribe the said Declaration at the same Time when the Oath for the due Execution of the said Places and Offices respectively shall be administered; and in Default hereof, every such Placing, Election and Choice, is hereby enacted and declared to be void. (2)

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(1) This is not required in Ireland.—See 1 Gabbett, 424.

(2) If no Notice of the Disqualification is given, at the Time of the Election, the Election is merely void—and the Votes for a Person having the Minority are thrown away; but if Notice is given, although after the Election has begun, and some Votes have been given, the Election of the Person having the Minority is valid.—Rex. *v.* Hawkins, 10 East. 211, affirmed in the House of Lords, 2 Dow. 124. By the annual Indemnity Act, the Disqualification is removed in Case of taking the Sacrament before a specified Day—but so as not to intitle a Person to an Office *already legally filled up and enjoyed by another Person.* Unless the Person having the Minority is actually sworn before the taking of the Sacrament by the other, (although wrongfully refused to be so,) the Indemnity takes Place.—Rex. *v.* Parry. 14 East. 549.

XIII. Provided always, and be it enacted, That every Person who shall be placed in any Corporation by Virtue of this Act, shall upon his Admission take the Oath or Oaths usually taken by the Members of such Corporation.

No. 4.
13 Car. II. c. 1.
The usual Oath.

XIV. Provided also, and be it hereby enacted, That the Powers granted to the Commissioners by Virtue of this Act, shall continue and be in Force until the Five and Twentieth of *March*, One Thousand Six Hundred Sixty-three, and no longer.

How long the Commissioners' Powers shall continue.

XV. Provided, That if any Action, Bill, Plaint or Suit, shall at any Time hereafter happen to be brought or commenced against any Person or Persons nominated a Commissioner as aforesaid, for any Matter or Thing by them, or any of them, done by Virtue or in Pursuance of this Act, That then it shall be lawful to and for every such Person and Persons against whom such Action, Bill, Plaint or Suit shall be brought or commenced, to plead the General Issue, and to give this Act, or any other special Matter in Evidence; and if the Verdict shall pass with the Defendant or Defendants in any such Action, or the Plaintiff or Plaintiffs become nonsuit, or suffer any Discontinuance thereof, that in every such Case the Judge or Judges before whom the said Matter shall be tried, or be depending, shall by Force and Virtue of this Act allow unto the Defendant or Defendants his or their Treble Costs, which he or they shall have sustained by Reason of their wrongful Vexation in Defence of the said Action or Suit, for which the said Defendant or Defendants shall have like Remedy as in other Cases where Costs by the Laws of this Realm are given to the Defendants.

Commissioners sued may plead the General Issue, and recover Treble Costs.

XVI. Provided always, and it is hereby declared, That this Act or any Thing therein contained, shall not extend or be to the Prejudice of any Person or Persons whatsoever, that hath any Reversion or Reversions of any of the Offices or Places belonging to the City of *London*, by Force or Virtue of any Order, Grant, Designation or Nomination of the Lord Mayor and Court of Aldermen of the said City heretofore respectively made or granted to him or them before the Times of the late Wars, for or in Respect of such Grant, Designation or Nomination only; any Thing in this Act to the contrary notwithstanding.

Reversions of Offices in London saved.

No. 5.

6 Anne, c. 21.—An Act for the avoiding of Doubts and Questions touching the Statutes of divers Cathedral and Collegiate Churches.

'WHEREAS several Doubts and Questions have arisen, and 'may hereafter arise, in relation to the Validity and Force of 'the Statutes of divers Cathedral and Collegiate Churches, founded by 'King HENRY the Eighth, of famous Memory, which Doubts and 'Questions have been occasioned, partly by a Temporary Act of 'Parliament made in the first Year of the Reign of Queen MARY the 'First, in Relation to such Statutes made by the said late King 'HENRY the Eighth, and in order to defeat the true and pious Ends 'and Designs of the said Foundations, and partly by Reason of the 'known Loss of many Records and Evidences during the late Rebel-'lion in this Kingdom: And whereas the said Doubts and Disputes 'may in Time not only turn to the great Disquiet and Prejudice of 'the said Foundations, but may prove a manifest Obstruction to the 'Peace, Order, good Government and Discipline of the Church,

6 Anne, c. 21.
1 M. 1. Sess. 8.

No. 5.
6 Anne, c. 21.

Statutes of Cathedral and Collegiate Churches practised since the Restoration of K. Charles II. to be good and valid.

'unless some speedy and effectual Remedy be provided;' Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That in all Cathedral and Collegiate Churches, founded by the said King HENRY the Eighth, such Statutes as have been usually received and practised in the Government of the same respectively, since the late happy Restoration of King CHARLES the Second, and to the Observance whereof the Deans and Prebendaries, and other Members of the said Churches, from the said Time have used to be sworn at their Installments or Admissions, shall be, and shall be taken and adjudged to be good and valid in Law, and shall be, and be taken and adjudged to be the Statutes of the said Churches respectively; nevertheless so far forth only as the same, or any of them, are in no Manner repugnant to, or inconsistent with the Constitution of the Church of *England*, as the same is now by Law established, or the Laws of the Land.

No Prosecution for non Observance of Statutes before 9 March, 1707.

II. Provided always, and be it further enacted by the Authority aforesaid, That no Person or Persons shall at any Time hereafter be liable to any Prosecution, Censure, or Punishment whatsoever, for not having observed any of the Statutes hereby ratified and confirmed, or for having done any Thing contrary to the same, on or before the ninth Day of *March* One Thousand Seven Hundred and Seven; any Thing herein contained to the contrary notwithstanding.

Queen may alter revoke or enlarge the Statutes, and make new ones, &c.

III. Provided always, and be it enacted, That it shall and may be lawful for her Majesty, during her Life (which God long preserve) from Time to Time to alter, amend, correct, revoke, diminish, or enlarge the said Statutes, or any of them, and to make new Statutes and Ordinances for the said Cathedral and Collegiate Churches, and for resuming or settling the local Visitation of them, or any of them, in such Manner, from Time to Time, as to her Majesty shall seem meet.

No. 6.

9 Anne, c. 20.—An Act for rendering the Proceedings upon Writs of *Mandamus*, and Informations in the Nature of a *Quo Warranto*, more speedy and effectual; and for the more easy trying and determining the Rights of Offices and Franchises in Corporations and Boroughs.

9 Anne, c. 20.

This Act is legally, clearly, and correctly drawn. It was drawn by Mr Just. Powell, 1 Bur. 407. 1 Blac 95 For the Intention of this Act, (which is called the Mandamus Act,) see 4 Bur. 2120.

'WHEREAS divers Persons have of late illegally intruded themselves into, and have taken upon themselves to execute the Offices of Mayors, Bailiffs, Portreeves and other Offices, within Cities, Towns Corporate, Boroughs, and Places, within that Part of *Great Britain* called *England* and *Wales*; and where such Offices were annual Offices, it hath been found very difficult, if not impracticable, by the Laws now in Being, to bring to a Trial and Determination the Right of such Persons to the said Offices within the Compass of the Year; and where such Offices were not annual Offices, it hath been found difficult to try and determine the Right of such Persons to such Offices, before they have done divers Acts in their said Offices, prejudicial to the Peace, Order, and good Government within such Cities, Towns Corporate, Boroughs, and Places, wherein they have respectively acted: And whereas divers

'Persons, who had a Right to such Offices, or to be Burgesses or 'Freemen of such Cities, Towns Corporate, Boroughs, or Places, 'have either been illegally turned out of the same, or have been 'refused to be admitted thereto, having in many of the said Cases no 'other Remedy to procure themselves to be respectively admitted, or 'restored to their said Offices or Franchises of being Burgesses or 'Freemen, than by Writs of *Mandamus*, the Proceedings on which 'are very dilatory and expensive, whereby great Mischiefs have 'already ensued, and more are likely to ensue, if not timely pre-'vented:' For Remedy whereof, Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the first Day of *Trinity* Term, in the Year of our Lord One Thousand Seven Hundred and Eleven, where any Writ of *Mandamus* shall issue out of the Court of *Queen's Bench*, the Courts of Sessions of Counties Palatine, or out of any the Courts of Grand Sessions in *Wales*, in any of the Cases aforesaid, such Person or Persons, who by the Laws of this Realm are required to make a Return (1) to such Writ of *Mandamus*, shall make his or their Return to the first Writ of *Mandamus*.

No. 6. 9 Anne, c. 20.

Returns to Writs of Mandamus out of the Queen's Bench, &c. shall be made to the first Writ.

II. And be it further enacted by the Authority aforesaid, That from and after the said first Day of *Trinity* Term, as often as in any of the Cases aforesaid, any Writ of *Mandamus* shall issue out of any of the said Courts, and a Return shall be made thereunto, it shall and may be lawful to and for the Person or Persons suing or prosecuting such Writ of *Mandamus*, to plead to, or traverse all or any the material Facts contained within the said Return; to which the Person or Persons making such Return shall reply, take Issue, or demur; and such further Proceedings, and in such Manner shall be had therein, for the Determination thereof, as might have been had if the Person or Persons suing such Writ had brought his or their Action on the Case for a false Return; and if any Issue shall be joined on such Proceedings, the Person or Persons suing such Writ shall and may try the same in such Place, (2) as an Issue joined in such Action on the Case, should or might have been tried; and in case a Verdict shall be found for the Person or Persons suing such Writ, or Judgment given for him or them upon a Demurrer, or by *Nil dicit*, or for Want of a Replication or other Pleading, he or they shall recover his or their Damages and Costs, (3) in such Manner, as he or they might have done in such Action on the Case as aforesaid; such Costs and Damages to be levied by *Capias ad Satisfaciendum*, *Fieri Facias*, or *Elegit*; and a peremptory Writ of *Mandamus* shall be granted without Delay, for him or them for whom Judgment shall be given, as might have been, if such Return had been adjudged insufficient; and in case Judgment shall be given for the Person or Persons making such Return to such Writ, he or they shall recover his or their Costs of Suit, to be levied in Manner aforesaid.

As soon as the Return is made, the Prosecutor in such Writ may plead, &c to which the Person returning may reply, &c.

How the Proceedings shall be.

III. Provided always, That if any Damages shall be recovered by virtue of this Act against any such Person or Persons making such Return to such Writ, as aforesaid, he or they shall not be liable to be

Persons against whom Damages shall be recovered, or liable to be sued in other Actions.

(1) As to the Certainty required in such Return, see Rex v. Mayor of Lyme Regis, Doug. 149.

(2) If the Prosecutor alleges all the material Facts in one County, he cannot issue the Venire into another.—Rex v. Mayor of Newcastle-upon-Tyne, 1 East, 114.

(3) The Damages to which the Costs are consequential must be given as Part of the Verdict, and the Omission cannot be supplied by Writ of Inquiry. But a Venire de novo must be awarded.—Kynaston v. Mayor, &c of Shrewsbury, 2 Strange, 1051.

No. 6.
9 Anne, c. 20.

sued in any other Action or Suit, for the making such Return; any Law, Usage, or Custom to the contrary thereof in any wise notwithstanding.

How Informations in the Nature of Quo Warranto may be exhibited against such as intrude, & into Offices, &c. 2 Bur. 869. 3 Bur 1615 1812

IV. And be it further enacted by the Authority aforesaid, That from and after the said first Day of *Trinity* Term, in case any Person or Persons shall usurp, intrude into, or unlawfully hold and execute any of the said Offices or Franchises, it shall and may be lawful to and for the proper Officer in each of the said respective Courts, with the Leave of the said Courts respectively, to exhibit one or more Information or Informations in the Nature of a *Quo Warranto*, at the Relation of any Person or Persons desiring to sue or prosecute the same, and who shall be mentioned in such Information or Informations to be the Relator or Relators against such Person or Persons, (4) so usurping, intruding into, or unlawfully holding and executing any of the said Offices or Franchises, (5) and to proceed therein in such Manner as is usual in Cases of Information in the Nature of a *Quo Warranto*; and if it shall appear to the said respective Courts, that the several Rights of divers Persons to the said Offices or Franchises may properly be determined on one Information, it shall and may be lawful for the said respective Courts to give Leave to exhibit one such Information against several Persons, (6) in order to try their respective Rights to such Offices or Franchises, and such Person or Persons, against whom such Information or Informations in the Nature of a *Quo Warranto* shall be sued or prosecuted, shall appear and plead as of the same Term or Sessions in which the said Information or Informations shall be filed, unless the Court where such Information shall be filed, shall give further Time to such Person or Persons, against whom such Information shall be exhibited to plead; and such Person or Persons, who shall sue or prosecute such Information or Informations in the Nature of a *Quo Warranto*, shall proceed thereupon with the most convenient Speed that may be; any Law or Usage to the contrary thereof in any wise notwithstanding.

Judgment of Ouster shall be given against Persons guilty of such Usurpation, &c.

V. And be it further enacted and declared by the Authority aforesaid, That from and after the said first Day of *Trinity* Term, in case any Person or Persons, against whom any Information or Informations in the Nature of a *Quo Warranto* shall in any of the said Cases be exhibited in any of the said Courts, shall be found or adjudged guilty of an Usurpation, or Intrusion into, or unlawfully holding and executing any of the said Offices, or Franchises, it shall and may be lawful to and for the said Courts respectively, as well to give Judgment of *Ouster* against such Person or Persons, of and from any of the said Offices or Franchises, as to fine such Person or Persons respectively, for his or their usurping, intruding into, or unlawfully holding and executing any of the said Offices or Franchises; and also it shall and may be lawful to and for the said Courts respectively, to give Judgment, That the Relator or Relators, in such Information named, shall recover his or their Costs (7) of such Prosecution; and if

and the Relator shall recover Costs

If Judgment be given for the Defendant, he shall have Costs against the Relator.

(4) There can be no Information upon this Act against the Corporation itself, as a Body.—Rex *v.* Corporation of Carmarthen, 2 Bur. 869.

(5) The Act only extends to Corporation Offices; a Fair or a Market is not within the Intention or Construction of it. As to an Information at Common Law, see Rex. *v.* Marsden et alt. 3 Bur. 1812.

(6) The Court would direct a Consolidation of Informations, though the Prosecutor might judge it inconvenient, unless it were shewn to be so.—Rex. *v.* Alt. 1 Burr. 573.

(7) An Information for presuming to hold a Court without Authority is good at Common Law, but does not entitle to Costs under this Act, which relates only to Corporate Rights, or Rights to Freedom in Corporations.—Rex *v.* Williams, 1 Burr. 402. 1 Bl. 93. So the Prosecutor of a Quo Wrranto Information, against a Constable, is not entitled to Costs.—Rex *v.* Wallis, 5 T. R. 375. See also Rex *v.* Richardson, 9 East, 469.

No. 6.
9 Anne, c. 20.

Judgment shall be given for the Defendant or Defendants in such Information, he or they, for whom such Judgment shall be given, shall recover his or their Costs therein expended against such Relator or Relators; such Costs to be levied in Manner aforesaid. (8)

The Court may allow a convenient Time to return a Mandamus, plead Reply, &c.

VI. And be it further enacted and declared by the Authority aforesaid, That it shall and may be lawful to and for the said Courts respectively, to allow to such Person or Persons respectively, to whom any Writ of *Mandamus* shall be directed, or against whom any Information in the Nature of a *Quo Warranto*, in any of the Cases aforesaid, shall be sued or prosecuted, or to the Person or Persons who shall sue or prosecute the same, such convenient Time respectively, to make a Return, plead, reply, rejoin, or demur, as to the said Courts respectively shall seem just and reasonable; any Thing herein contained to the contrary thereof in any wise notwithstanding.

4 Annæ, c 16, and all the Statutes of Jeofayles, shall be extended to Writs of Mandamus, &c. 32 H. VIII. c. 30 18 El. c. 14 37 El c. 5 21 Ja I. c 13 16 & 17 Car. II c. 28.

VII. And be it further enacted by the Authority aforesaid, That after the said first Day of *Trinity* Term, an Act made in the fourth Year of her Majesty's Reign, intituled, *An Act for the Amendment of the Laws, and the better Advancement of Justice*, and all the Statutes of *Jeofayles*, shall be extended to all Writs of *Mandamus*, and Informations in the Nature of a *Quo Warranto*, and Proceedings thereon, for any the Matters in this Act mentioned. (9)

'VIII. And whereas in divers Counties, Boroughs, Towns 'Corporate, and Cinque-Ports, where the Mayor, Bailiff, or other '*Officer or Officers*, to whom it belongs to preside at the Election, 'and make Return of any Member to serve in Parliament, ought to be 'annually elected, the same Person hath been *re-elected into such* '*Office* for several Years successively, which hath been found in'convenient;' Be it enacted and declared by the Authority aforesaid, That *no Person or Persons, who hath been or shall be in such annual Office, for one whole Year, shall be capable to be chosen into the same Office* for the Year immediately ensuing: and where any such annual Officer or Officers is or are to continue for a Year, and, until some other Person or Persons, shall be chosen and sworn into such Office, if any such Officer or Officers shall voluntarily and unlawfully obstruct, and prevent the choosing another Person or Persons to succeed into such Office at the Time appointed for making another Choice, shall forfeit one hundred Pounds for every such Offence, to be recovered with Costs of Suit, by such Person as will sue for the same in any of her Majesty's Courts of Record before mentioned, by Action of Debt, Bill, Plaint, or Information, wherein no Essoin, Protection, or Wager of Law shall be allowed, nor any more than one Imparlance; one Moiety thereof to her Majesty, and the other Moiety thereof to him or them that will sue for the same.

No annual returning Officer shall be re-elected; and such annual Officer obstructing the Election of his Successor, to forfeit 100l.

(8) In Rex *v.* Morgan, 2 Strange, 1041, it was held, that a Relator, not proceeding to Trial within a Year, was only liable to Costs upon his Recognizance, for not Proceeding to Trial under Statute 405 William & Mary, c. 18, and not to general Costs under this Statute, there being no Verdict or Judgment; but in Rex *v.* Powell, it was held, that where the Relator does not proceed to Trial pursuant to Notice, it is within the Equity of this Statute, and he shall pay Costs as in Rex *v.* Powell, 1 Strange, 33.

(9) This Section did not enable a Defendant to an Information, in the Nature of Quo Warranto, to plead several Matters—Rex *v.* Archbishop of York, Willes, 533—but such Power is given by 32 G. III. c. 58, Post No. 13.

No. 7.

5 George I. c. 4.—An Act for strengthening the Protestant Interest in these Kingdoms.

5 Geo. I. c. 4.

'WHEREAS an Act of Parliament was made in the Tenth Year 'of the late Queen ANNE, intituled, *An Act for preserving 'the Protestant Religion, by better securing the Church of* England, '*as by Law established, and for confirming the Toleration granted 'to Protestant Dissenters by an Act, intituled,* An Act for exempting 'their Majesties' Protestant Subjects, dissenting from the Church 'of *England,* from the Penalties of certain Laws, *and for supplying 'the Defects thereof, and for the further securing the Protestant 'Succession, by requiring the Practicers of the Law in* North Britain '*to take the Oaths and subscribe the Declaration therein mentioned.* 'And whereas Part of the said Act, as also another Act herein after 'mentioned, have been found to be inconvenient,' Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the Authority of the same, That the said recited Act passed in the Tenth Year of the late Queen ANNE, from the Beginning thereof to these Words, 'And it 'is hereby further enacted and declared by the Authority aforesaid, 'That the Toleration granted to Protestant Dissenters,' and also the Act made in the Twelfth Year of the Reign of the late Queen ANNE, intituled, *An Act to prevent the Growth of Schism, and for the further Security of the Churches of* England *and* Ireland, *as by Law established,* shall be and hereby repealed, annulled and made void.

Part of 10 Anne c. 2, & the whole Act of 12 Anne stat. 2, c. 7, repealed.

II. Provided always, and be it enacted by the Authority aforesaid, That if any Mayor, Bailiff, or other Magistrate in that Part of *Great Britain* called *England,* the Dominions of *Wales,* or the Town of *Berwick-upon-Tweed,* or the Isles of *Jersey* or *Guernsey,* shall knowingly or wilfully resort to, or be present at any publick Meeting for religious Worship, other than of the Church of *England* as by Law established, in the Gown or other peculiar Habit, or attended with the Ensign or Ensigns of or belonging to such his Office, that every such Mayor, Bailiff, or other Magistrate, being thereof convicted by due Course of Law, shall be disabled to such Office or Offices, Employment or Employments, and shall be adjudged incapable to bear any publick Office or Employment whatsoever within that Part of *Great Britain* called *England,* the Dominion of *Wales,* and Town of *Berwick-upon-Tweed,* or Isles of *Jersey* & *Guernsey.* (1)

Mayor, &c. resorting to any Conventicle with Ensigns of his Office disabled to hold any publick Office.

(1) Sir Humphry Edwin, a Lord Mayor of London, had the Imprudence, soon after the Toleration Act, to go to a Presbyterian Meeting-house in his Formalities, which is alluded to by Dean Swift, in his *Tale of a Tub,* under the Allegory of Jack getting on a grey Horse and eating Custard.— 1 Bl. Com. 554.

No. 8.

5 George I. c. 6.—An Act for quieting and establishing Corporations.

5 Geo. I. c. 6.
13 Car. II. st. 2, c. 1.

'WHEREAS by an Act made in the thirteenth Year of King 'CHARLES the Second, intituled, *An Act for the well-'governing and regulating of Corporations,* it is, amongst other 'Things, enacted, That every Person or Persons, who from and after

'the Expiration of the Commissions in the said Act mentioned, 'should be placed, elected or chosen, in or to any the Offices or 'Places of Mayors, Recorders, Bailiffs, Town-clerks, Common Coun-'cil-men, or to any Office or Offices of Magistracy, or Places or 'Trusts, or other Imployment relating to or concerning the Govern-'ment of Cities, Corporations and Boroughs, and Cinque-ports and 'their Members, and other Port Towns, should at the same Time 'when the Oath for the due Execution of the said Places and Offices 'respectively should be administred, take the following Oath, viz. No. 1 5 Geo. I.

I A. B. do declare and believe, That it is not lawful, upon any Pretence whatsoever, to take Arms against the King; and that I do abhor that traiterous Position of taking Arms by his Authority against his Person, or against those that are commissioned by him: So help me God.' Oath.

'And subscribe the following Declaration, viz.

I A. B. do declare, That I hold that there lies no Obligation upon me or any other Person, from the Oath commonly called, *The Solemn League and Covenant*; and that the same was in itself an unlawful Oath, and imposed upon the Subjects of this Realm against the known Laws and Liberties of this Kingdom.' The Declaration.

'And that in Default thereof every such Placing, Election and Choice 'should be void: And whereas the taking the said Oath, and sub-'scribing the said Declaration, have for several Years last past been 'generally omitted, and Questions have of late arisen, Whether the 'said Statute made in the said Thirteenth Year of King CHARLES 'the Second, as to the said Oath and Declaration, be yet in Force:' Therefore, for avoiding of all such Questions for the future, and for the establishing the Peace and Quiet of Corporations, Be it declared and enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all and every Member and Members of any Corporation within this Kingdom, and all and every Person and Persons that were required by the said above recited Act to take the said Oath, or subscribe the said Declaration, shall be and are hereby confirmed in their several and respective Offices and Places, notwithstanding their Omission to take the said Oath or subscribe the said Declaration, and shall be indemnified, freed and discharged of and from all Incapacities, Disabilities, Forfeitures and Penalties arising from such Omission, and none of their Acts shall be questioned or avoided for or by Reason of the same; but that all such Acts shall be and are hereby declared and enacted to be as good and effectual, as if all and every such Person and Persons had taken the said Oath, and subscribed the said Declaration, according to the Direction of the said Act. 13 Car. II. st. 2. c. 1. Members of Corporations are confirmed in their Offices though they have not taken the said Oath and Declaration. And indemnified, &c.

II. And be it also further enacted by the Authority aforesaid, That so much of the said Statute as requires the taking of the said Oath, and subscribing the said Declaration, shall be, and is hereby repealed; and that neither the said Oath or Declaration shall be required for the future. So much of the recited Act as requires the taking the said Oath, &c. repealed.

'III. And whereas by the said recited Act made in the thir-'teenth Year of King CHARLES the Second, it is enacted, That no 'Person or Persons shall be placed, elected or chosen, in or to any of 'the Offices or Places relating to or concerning the Government of 'any City, Corporation, Borough, Cinque-port and their Members, 'and other Port Towns, or any other Offices in the said recited Act 13 Car. II. st. 2. c. 1.

No. 8.
5 Geo. 1. c. 6.

'mentioned or expressed, that shall not have, within one Year next 'before such Election or Choice, taken the Sacrament of the Lord's 'Supper, according to the Rites of the Church of *England*, and that 'in Default thereof every such Placing, Election and Choice shall be 'void;' Be it further enacted by the Authority aforesaid, That all and every the now Member and Members of any Corporation within this Kingdom, and all and every Person and Persons now in actual Possession of any Office, that were required by the said above recited Act to take the Sacrament of the Lord's Supper according to the Rites of the Church of *England*, within one Year next before his Election or Choice into such Office, shall be and are hereby confirmed in their several and respective Offices and Places, notwithstanding their Omission to take the Sacrament of the Lord's Supper as aforesaid, and shall be indemnified, freed and discharged, of and from all Incapacities, Disabilities, Forfeitures and Penalties arising from such Omission; and that none of their Acts, nor the Acts not yet avoided, of any who have been Members of any Corporation, or in actual Possession of such Offices, shall be questioned or avoided for or by Reason of such Omission; but that all such Acts shall be and are hereby declared and enacted to be as good and effectual as if all and every such Person and Persons had taken the Lord's Supper in Manner as aforesaid; nor shall any Person or Persons, who shall be hereafter placed, elected or chosen, in or to any the Offices aforesaid, be removed by the Corporation, or otherwise prosecuted for or by Reason of such Omission, nor shall any Incapacity, Disability, Forfeiture or Penalty, be incurred by Reason of the same, unless such Person be so removed, or such Prosecution be commenced within six Months after such Person's being placed or elected into his respective Office, as aforesaid, and that in Case of a Prosecution the same be carried on without wilful Delay. (1)

Members of Corporations, &c. who have omitted to take the Sacrament as enjoined by the said Act, shall be nevertheless confirmed in their Offices, &c. ... from such Omission.

See 2 Bur. 1016.

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(1) On a Mandamus to admit, the Party applying must prove that he had taken the Sacrament according to the Statute 13 Car. 2. and the Case is not within this Statute, as the Person never was admitted, and therefore cannot be removed, Tufton v. Nevinson, 2 Lord Raym. 1351. 1 Str. 585. But where a Party elected obtained a Mandamus to deliver the Common Seal, &c. when a Return was made of *not duly elected*, it was held that, since the Statute the Election was not void, but only voidable, and that as there was no Removal within the limited Time, the Election stood confirmed and became absolute, and that the Case differed from the preceding one, as the Plaintiff was in possession of the Office. Crawford v. Powell, 2 Bur. 1013. In Harrison v. Evans, Wilm. 159. Lord Ch. J. Wilmot said, The Act only affects Cases where there has been six Months' Possession, and is rather a Statute of Limitations founded upon public Convenience, to guard against the violent Operation of the annulling Words in the Corporation Act. But before the six Months are expired, and even afterwards, where there has been no Possession of the Office under such an Election, the Operation of the former Law is not at all varied by it. And in Rex v. Monday, Cowper 539. Lord Mansfield observed to the same Effect, that the Statute 5 Geo. 1. c. 6. operates rather as a Protection to the Possession, than as a Bar to the Remedy. If a Man under this Disability has been in Possession six Months, there shall be no Remedy to turn him out. His Title shall not afterwards be questioned on that Ground. It is similar to the Rule laid down by this Court in Respect of Informations where the Party has been in Possession twenty Years. But if this Objection is made recently before any Possession, as suppose the Party upon being refused to be sworn in, was to apply for a Mandamus, and the Answer on the Application should be, that the Ground of Refusal was because he had not taken the Sacrament, I should think it a sufficient Objection. *It is the Possession only that is protected, and that, not till after the Expiration of six Months.* The Object of the Act was to lessen the Rigour of the Stat. 13 Car. II. made in warmer Times, and that has gone a great Way. See also Rex. v. Hawkins, 10 East, 211. 2 Dow, 124.

No. 9.

11 Geo. 1. c. 4—An Act for preventing the Inconveniences arising for want of Elections of Mayors or other Chief Magistrates of Boroughs or Corporations being made upon the Days appointed by Charter or Usage for that Purpose, and directing in what Manner such Elections shall be afterwards made.

'WHEREAS in many Cities, Boroughs and Towns Corporate within that Part of *Great Britain* called *England, Wales*, and *Berwick upon Tweed* the Election of the Mayor, Bailiff or Bailiffs or other Chief Officer or Officers, is by Charter or ancient Usage confined to a particular Day or Time, without any Provision how to act or proceed, in case no Election be then made, and it frequently happens, that by such Charter or Usage particular Acts are required to be done at certain Times, in order to and for the completing of such Elections, and by the Contrivance or Default of the Person or Persons who ought to hold the Court, or preside in the Assembly where such Elections are to be made, or such Acts to be done, or by Accident, it hath sometimes happened, and may frequently do so, if not timely prevented, That no Courts or Assemblies have been held, or Elections made, or such Acts done within the Time fixed for that Purpose, in which Cases, if Election of such Officers could not afterwards be made or completed, or in consequence of such Omission the Corporation should be dissolved, great Mischiefs might ensue ' For Remedy and Prevention whereof, Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That if in any City, Borough or Town Corporate within that Part of *Great Britain* called *England, Wales*, and *Berwick upon Tweed*, no Election shall be made of the Mayor, Bailiff or Bailiffs, or other chief Officer or Officers of such City, Borough or Town Corporate, upon the Day or within the Time appointed by Charter or Usage for such Election, or such Election being made, shall afterwards become void, whether such Omission or Avoidance shall happen through the Default of the Officer or Officers who ought to hold the Court or preside where such Election is to be made, or by any Accident or other Means whatsoever, the Corporation shall not thereby be deemed or taken to be dissolved or disabled from electing such Officer or Officers for the future But in any Case where no Election shall be made as aforesaid, it shall and may be lawful for the Members or Persons of such City, Borough or Corporation, who have Right to vote, or be present at, or to do any other Act necessary to be done, in order to or for the completing of such Election, and they, or such of them as shall not be hindred by any reasonable Impediment or Excuse, are hereby required respectively to meet or assemble together in the Town-Hall or other usual Place of Meeting for making such Election, within such City, Borough or Town Corporate, upon the Day next after the Expiration of the Time within which such Election ought to have been made, unless such Day shall happen to be *Sunday* and then upon the *Monday* following, between the Hours of Ten in the Morning and Two in the Afternoon of the same Day, (1) and that the Members or Persons having Right to vote at, or to do any other Act

11 Geo I c 4 Sec 3 Bur 1872

Where Election for Mayors or other Officers shall not be made on the Days appointed by Charter or Usage Corporations not disabled from electing

But may meet together at the Town Hall &c on the Day after,

(1) This seems to be only directory —Rex *v* Pole, Selwyn, N. P 997. The Act should be construed as literally as possible —Idem.

No. 9.
11 Geo. I. c. 4.

and proceed to Election.

Mayor, &c. absenting, the next in Place may hold the Court.

If no Election be made, or Election become void, King's Bench may award Mandamus for electing. See 4 Bur. 2008.

necessary to be done in order to such Election, or such of them as shall be so assembled or met together, shall forthwith proceed to the Election of a Mayor, Bailiff or Bailiffs, or other Chief Officer or Officers for such City, Borough or Corporation, and to do every Act necessary to be done in order to or for the completing of such Election, in such Manner as was usual in, or in order to the Election of such Officer or Officers, upon the Day or within the Time appointed by Charter or Usage for such Election; and in case upon such Day of Meeting hereby appointed for such Election, the Mayor, Bailiff or Bailiffs, or other proper Officer or Officers, who ought to have held the Court, or presided at the Assembly for such Election, or doing any other Act necessary to be done in order to such Election, if the same had been made or done on the Day fixed, or with the Time limited by Charter or Usage for that Purpose, shall be absent, (2) then such other Person having a Right to vote, being the nearest then present in Place or Office to the Person or Persons so absenting himself or themselves, shall hold the Court or preside in the Meeting or Assembly hereby appointed, and shall have the same Power and Authority in all Respects therein, as belongs to the Mayor, Bailiff or Bailiffs, or other Chief Officer or Officers of the same City, Borough or Town Corporate, at any Court or Assembly for the Election of Officers for such Place, or for doing any other Act necessary to be done in order to such Election.

II. And it is hereby further enacted by the Authority aforesaid, That if it shall happen that in any City, Borough or Town Corporate within that Part of *Great Britain* called *England*, *Wales*, and *Berwick upon Tweed*, no Election shall be made of the Mayor, Bailiff or Bailiffs, or other Chief Officer or Officers (3) of such City, Borough or Town Corporate, upon the Day or within the Time appointed by Charter or Usage for that Purpose, and that no (4) Election of such Officer or Officers shall be made, pursuant to the Directions herein before prescribed, or such Election being made, shall afterwards become void as aforesaid, in every such Case it shall and may be lawful for his Majesty's Court of King's Bench, upon Motion to be made in the Court (5) to award a Writ or Writs of *Mandamus*, requiring the Members or Persons of such City, Borough or Town Corporate, having a Right to vote at, or to do any other Act necessary to be done in order to such Election respectively, to assemble themselves upon a Day and at a Time to be prefixed in such Writ or Writs, and to proceed to the Election of a Mayor, Bailiff or Bailiffs, or other Chief Officer or Officers, as the Case shall require, and to do every Act necessary to be done in order to such Election, or to signify to the said Court good Cause to the contrary, and thereupon to cause such Proceedings to be had and made, as in any other Cases of Writs of *Mandamus* granted by the said Court for Election of Officers of Cor-

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(2) Where an Assembly was regularly convened, and it was held by the Mayor that there could be no Election, and the Meeting dissolved without Objection, an Election by Burgesses who staid behind is void.—Rex v. Gaboriau, 11 East, 77.

(3) The Act is not confined to annual Offices; it extends to the Office of Burgess, which is held for Life. The Mandamus may be granted for the Election, not only of head Officers, but of others who form a constituent Part of the Corporation.—Case of Scarborough, 2 Strange, 1180.

(4) If there be an Election de facto, such as would be fairly the Subject of Trial, by an Information in the Nature of a Quo Warranto, the Court will not grant a Mandamus under this Statute, but otherwise if it is a mere colorable Election.—Rex v. Mayor of Cambridge, 4 Burr. 2008. If a Person is elected who has not received the Sacrament within a Year, a Mandamus will be granted.—Rex v. Corporation of Bedford, 1 East, 79.

(5) This Power may be exercised after a Lapse of three or four Years.—

porations, and of the Day and Time appointed in and by any such Writ or Writs of *Mandamus* for holding such Assembly, publick Notice in Writing shall, by such Person as the said Court shall appoint, be affixed in the Market-Place, or some other publick Place within such City, Borough or Town Corporate, by the Space of six Days before the Day so appointed, and such Officer or other Person respectively shall preside in such Assembly, as ought to have presided at the Election of such Mayor, Bailiff or Bailiffs, or other chief Officer or Officers, or at the doing any other Act necessary to be done in order to such Election, in case the same had been made or done upon the Day herein before prescribed for that Purpose.

No. 9. 11 Geo. I. c. 4.

Six Days publick Notice to be given of the Election.

III. 'And whereas in certain Boroughs and Towns Corporate 'within that Part of *Great Britain* called *England*, *Wales*, and '*Berwick upon Tweed*, the Mayor, Bailiff or Bailiffs, or other chief 'Officer or Officers, is or are to be nominated, elected or sworn at 'a Court-Leet or View of Frank-Pledge, or some other Court, and 'by reason of the Contrivance or Default of the Lord or his Steward, 'or such other Officer by or before whom such Court ought to be 'held, in not holding the same, or by some Accident, it hath happened 'and may hereafter happen, that no due Nomination, Election or 'Swearing of such Mayor, Bailiff or Bailiffs, or other Chief Officer 'or Officers, hath been or shall be had or made:' Be it further enacted by the Authority aforesaid, That in every such Case it shall and may be lawful to and for his Majesty's Court of King's Bench, upon Motion to be made in the said Court, to award a Writ of *Mandamus*, requiring the Lord or his Steward or other Officer, by or before whom such Court ought to be held, to hold or cause to be holden such Court-Leet or other Court, and to do every other Act necessary to be done by him in order to such Nomination, Election or Swearing, at such Day and Time as shall be for that Purpose judged proper by the said Court of King's Bench, and shall be appointed in such Writ, or to signify to the said Court good Cause to the contrary, and thereupon to cause such Proceedings to be had and made, as in other Cases of Writs of *Mandamus* granted by the said Court, for holding of any Court, and of the Day and Time appointed in and by any such Writ of *Mandamus* for holding such Court, publick Notice in Writing shall, by such Person as the said Court of King's Bench shall appoint, be affixed in the Market-Place, or some other publick Place within such Borough or Town Corporate, by the Space of six Days before the Day so appointed: And where a Nomination of Persons in order to the Election of any such Mayor, Bailiff or Bailiffs, or other chief Officer or Officers, is to be made at such Court-Leet, or other Court, in every such Case, after such Nomination made, all and every other Act and Acts necessary to be done in order to such Election, shall be had, made and done at such Assembly, and in such Manner and Form, as the same ought to have been had, made and done, in case such Election had been made upon the Day next after the Expiration of the Time prescribed for such Election by the Charter or Usage of such Borough or Corporation, according to the Directions herein before mentioned.

Where Mayors, &c. are to be nominated or sworn at a Court Leet, &c. and in Default of the Lord or Steward no Court be held, King's Bench may award a Mandamus for holding the Court Leet. See 3 Bur. 1452.

IV. And be it further enacted by the Authority aforesaid, That the Mayor, Bailiff or Bailiffs, or other chief Officer or Officers, who shall be elected pursuant to the Directions of this Act, shall take the Oath or Oaths by Law required at the Time of his Admission into such Office, before such Officer as shall preside at such Election, (6)

Mayors, etc. so elected, shall take the Oaths before the presiding Officer. See 4 Bur. 2132.

(6) The presiding Officer at an Election, on the Day following the regular Day, may swear in the Officer elected, although the Custom is for the Officer elected on the regular Day to be sworn at the following Court-Leet.—Rex v. Nance, Selw. N. P. 959.

No. 9.
11 Geo. I. c. 4.

in pursuance of this Act, who is hereby authorized and required to administer such Oath or Oaths; and shall have the same Privileges, Precedence, Powers and Authorities in all Respects, as any Mayor, Bailiff or Bailiffs, or other chief Officer or Officers of the same City, Borough or Corporation, elected on the Days or Times fixed by Charter or Usage for that Purpose, ought to have or enjoy. (7)

No such Election valid, unless as great a Number be present and concur, as required by Charter, etc.

V. Provided always, That no such Election, nor any Act done in order thereunto, shall be valid, unless as great a Number of Persons, having Right to be present at and vote therein, shall be present at the Assembly holden for such Purpose, and concur therein, as would respectively have been necessary to be present, and concur in such Election or Act, in case the same had been made or done upon the Day or within the Time appointed for that Purpose by the Charter or Usage of such City, Borough or Corporation, saving only, that the Presence of the Mayor, Bailiff or Bailiffs, or other chief Officer or Officers who ought to preside, shall not be necessary.

Mayors absenting themselves, etc. shall suffer Imprisonment for six Months, etc.

VI. And be it further enacted by the Authority aforesaid, That if any Mayor, Bailiff or Bailiffs, or other chief Officer or Officers of any City, Borough or Town Corporate, shall voluntarily absent himself or themselves from, or knowingly and designedly prevent or hinder the Election of any other Mayor, Bailiff or other chief Officer in the same City, Borough or Town Corporate, upon the Day or within the Time appointed by Charter or ancient Usage for such Election, the Person or Persons so offending, being thereof lawfully convicted, shall for every such Offence suffer Imprisonment for the Space of six Months without Bail or Mainprize, and shall be for ever disabled to take, hold or exercise any Office belonging to the same City, Borough or Corporation.

No Corporation dissolved or disabled by any Omission already happened.

VII. And be it further enacted by the Authority aforesaid, That no Corporation shall be deemed or adjudged to be dissolved or disabled from electing a Mayor, Bailiff or Bailiffs, or other chief Officer or Officers, by reason of any Omission or Default, which hath already happened in not nominating, electing or swearing a Mayor, Bailiff or Bailiffs, or other chief Officer or Officers of such Corporation, upon the Day or within the Time limited for such Nomination, Election or Swearing, by the Charter or Usage of such Corporation, or by reason of the Absence of the Mayor, Bailiff or Bailiffs, or other chief Officer or Officers who ought to have presided at the Assembly for such Nomination, Election or Swearing, or by reason of such Election having become void as aforesaid, but every such Corporation shall be adjudged, deemed and taken to be and to have been subsisting and capable of electing such Officer or Officers, to all Intents and Purposes; any such Omission, Absence, Default or Avoidance, or any Defect, Disability or Forfeiture arising therefrom, in any wise notwithstanding.

VIII. Provided always, That nothing herein contained shall extend, or be construed to extend, to invalidate or make void any Charter heretofore granted to and accepted by any City, Borough or Town Corporate, or any Corporation within the same, or any of them, or any Elections or Acts had, made or done in pursuance of any such Charter; nor to make good the Election of any Officer or Member, or of any Person claiming to be an Officer or Member of any City, Borough or Corporation, against whom any Judgment of *Ouster* shall have been entered or given upon any Information in the Nature of a *Quo Warranto*, or whose Election shall have been avoided upon any Writ of *Mandamus*, on or before the last Day of *Michaelmas* Term in

(7) A Swearing two Years after the Election held good.—Rex *v.* Courtenay, 9 East, 246.

the Year of our Lord One Thousand Seven Hundred and Twenty-four. No. 9. 11 Geo. I c 4.

IX. And be it further enacted by the Authority aforesaid, That where any Writ of *Mandamus* shall issue out of the Court of King's Bench in any of the Cases aforesaid, the Person or Persons to whom such Writ shall be directed, shall make his or their Return to the first Writ of *Mandamus*. Return to be made to the first Writ of Mandamus.

No. 10.

7 George III. c. 48.—An Act for regulating the Proceedings of certain Public Companies and Corporations carrying on Trade or Dealings with Joint Stocks, in Respect to the declaring of Dividends; and for further regulating the Qualification of Members for voting in their respective General Courts.

'WHEREAS by Virtue of divers Acts of Parliament, and of 'Royal Charters founded thereupon, certain Publick Companies or Corporations have been instituted for the Purpose of carrying 'on particular Trades or Dealings with Joint Stocks; and the Management of the Affairs of such Companies has been vested in their 'General Courts, composed of the Members at large of such Companies respectively; in which General Courts every Member of each respective Company, possessed of such Share in the Stock of the Company as in and by the said Acts of Parliament and Charters is limited 'with Regard to each of the said Companies respectively, is qualified and 'intitled to give a Vote or Votes: And whereas of late Years a most 'unfair and mischievous Practice has been introduced of splitting 'large Quantities of Stock, and making separate and temporary Conveyances of the Parts thereof, for the Purpose of multiplying or 'making occasional Votes immediately before the Time of declaring a 'Dividend, of chusing Directors, or of deciding any other important 'Question; which Practice is subversive of every Principle upon 'which the Establishment of such General Courts is founded, and, if 'suffered to become general, would leave the permanent Interest of 'such Companies liable at all Times to be sacrificed to the partial and 'interested Views of a few, and those perhaps temporary Proprietors.' 7 Geo III. c. 48.

Be it therefore enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the first Day of *August*, One Thousand Seven Hundred and Sixty-seven, no Member of any of the said Publick Companies or Corporations, instituted for the Purpose aforesaid, shall be deemed qualified to vote, or be admitted to give any Vote or Votes, in any General Court of any such Company, in Respect of any Stock transferred to him, her, or them, after the said first Day of *August*, One Thousand Seven Hundred and Sixty-seven, until he, she, or they, shall have been possessed of such Stock six Calendar Months; unless such Stock shall have been acquired or shall have come by Bequest, or by Marriage, or by Succession to an Intestate's Estate, or by the Custom of the City of *London*, or by any Deed of Settlement after the Death of any Person who shall have been intitled for Life to the Dividends of such Stock. Members disqualified from voting in a General Court who were not possessed ... Mon[ths] except, &c.

II. And be it further enacted by the Authority aforesaid, That the several and respective Oaths and Affirmations which are at present, either by Virtue of any Act of Parliament, or by any Charter of any Oath

No. 10.
7 Geo. III. c. 48.

of the said Companies, required to be administered to, or taken by the Members intitled to vote in the General Courts of the said Companies respectively, at or before giving their Votes, shall, from and after the said first Day of *August* One Thousand Seven Hundred and Sixty-seven, be altered in such Manner, as to extend to, and comprise the further Qualification required by this Act, in Respect of the Continuance of the Possession of such Stock as aforesaid; and that the said Oaths and Affirmations, so altered as aforesaid, shall, from and after the said first Day of *August*, One Thousand Seven Hundred and Sixty-seven, be severally and respectively administered to, and taken by the Members of such Companies, in the Place of those heretofore required to be administered and taken.

III. And forasmuch as no Part of the Business transacted by the General Courts of the said Companies can be of more Importance to the general and lasting Interest of the Companies themselves, or to the Preservation of Publick Credit, so closely connected with that Interest, than what concerns the fixing, from Time to Time, of the Dividends to be made out of the Profits and Produce of their Joint Stocks among the several Proprietors having Shares therein. And forasmuch as the Provisions hitherto made have not been found sufficient to prevent many great and dangerous Irregularities being practised in Relation to the making of sudden and unwarrantable Alterations in the Rates of such Dividends: Be it therefore enacted by the Authority aforesaid, That from and after the Tenth Day of *July*, One Thousand Seven Hundred and Sixty-seven, no Declaration of a Dividend shall be made by any General Court of any of the said Companies, other than one of the Half-yearly or Quarterly General Courts, at the Distance of five Calendar Months at the least from the last preceding Declaration of a Dividend; and that no Declaration of more than one Half-yearly Dividend shall be made by one General Court; and that no Question upon any Proposition for increasing the Rate of the Dividend, shall be decided otherwise than by Ballot, to be taken at the Distance of three entire Days, at the least, from the Adjournment, or Breaking up of the General Court, in which such Question shall have been proposed.

No Declaration of a Dividend, but at Half yearly or Quarterly General Courts, at five Months' Distance, &c.

IV. And be it further enacted by the Authority aforesaid, That this Act shall be deemed and taken to be a Publick Act; of which Notice shall be judicially taken by all Judges, Justices, and other Persons whatsoever, without specially pleading the same.

Publick Act.

No. 11.

12 Geo. III. c. 21.—An Act for giving Relief in Proceedings upon Writs of *Mandamus* for the Admission of Freemen into Corporations; and for other purposes therein mentioned.

12 Geo. III. c. 21.

'WHEREAS divers Persons, who have a Right to be admitted 'Citizens, Burgesses, or Freemen, of divers Cities, Towns 'Corporate, Boroughs, Cinque Ports, and Places, within that Part 'of *Great Britain* called *England* and *Wales*, being refused to be 'admitted thereto, have, in many Cases, no other ordinary Remedy 'to procure themselves to be admitted to the Franchises of being 'Citizens, Burgesses, or Freemen, than by Writs of *Mandamus*, the 'Proceedings on which are very dilatory and expensive; and, although 'any such Writ of *Mandamus* is obeyed, the Person applying is

No 11.

12. Geo III. c. 21.

'nevertheless put to great and unnecessary Trouble, Delay, and Expence: And whereas by the Laws now in being, in many Cases, 'no Provision is made for giving Costs to the Party suing out any 'such Writ where the same is obeyed;' for Remedy whereof, be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the first Day of *August*, one thousand seven hundred and seventy-two, where any Person shall be entitled to be admitted a Citizen, Burgess, or Freeman, of any such City, Town Corporate, Borough, Cinque Port, or Place, and shall apply to the Mayor, or other Person, Officer or Officers, in such City, Town Corporate, Borough, Cinque Port, or Place, who hath or have Authority to admit Citizens, Burgesses, and Freemen therein, to be admitted a Citizen, Burgess or Freeman thereof; and shall give Notice, specifying the Nature of his Claim, to such Mayor, or other Officer or Officers, that if he or they shall not so admit such Person a Citizen, Burgess, or Freeman, within one Month from the Time of such Notice, the Court of *King's Bench* will be applied to, for a Writ of *Mandamus*, to compel such Admission; and if such Mayor, or other Officer or Officers, shall, after such Notice, refuse or neglect to admit such Person, and a Writ of *Mandamus* shall afterwards issue to compel such Mayor, or other Officer or Officers, to make such Admission, and, in obedience to such Writ, such Persons shall be admitted by the said Mayor, or other Officer or Officers, a Citizen, Burgess, or Freeman of such City, Town Corporate, Borough, Cinque Port, or Place, then such Person shall (unless the Court shall see just Cause to the contrary) obtain and receive from the said Mayor, or other Officer or Officers, so neglecting or refusing as aforesaid, all the Costs to which he shall have been put in applying for obtaining and serving such Writ of *Mandamus*, and enforcing the same, by a Rule to be made by the Court out of which such Writ shall issue, for the Payment thereof, together with the Costs of applying for, obtaining, serving, and enforcing the said Rule; and if the Rule so to be made shall not be obeyed, then the same shall be enforced in such Manner as other Rules made by the said Court are or may be enforced by Law.

Person intitled to be admitted, and applying for that Purpose, giving Notice, etc. if Mayor, etc. refuse to admit, and a Mandamus issue, the Mayor to pay all Costs.

'II. And, in order that it may be known what Persons are, from 'Time to Time, admitted Freemen or Burgesses of any City, Corpo'ration, Borough, or Cinque Port,' be it further enacted by the Authority aforesaid, That the Mayor, Bailiff, Town Clerk, or other Officer of any City, Corporation, Borough, or Cinque Port, having the Custody of, or Power over, the Records of the same, shall, upon the Demand of any two Freemen or Burgesses, permit such Freemen or Burgesses, and their Agent or Agents, at any Time whatsoever, between the Hours of Nine in the morning and Three in the Afternoon, to inspect the Entries of Admission of Freemen, Burgesses, or other inferior Corporations, and to take Copies or Extracts therefrom, paying for every such Inspection two Shillings and Sixpence; and for every such Copy or Extract, not exceeding seventy-two Words, the sum of four Pence; and so in Proportion for all such Copies or Extracts: And if any Mayor, Bailiff, Town Clerk, or other Officer, shall refuse or deny the Inspection of any such Entries, or to give Copies or Extracts thereof, as before directed; he or they shall, for every such Denial or Refusal, forfeit and pay the Sum of one hundred Pounds to any Person who shall sue for the same; to be recovered, with Full Costs of Suit, by Action of Debt, in any of his Majesty's Courts of Record at *Westminster*; in which Action, it shall be sufficient for the Plaintiff to alledge in his Declaration, that the Defendant or the Defendants is or are indebted to the said Plaintiff in the Sum

Freemen to inspect Entries of Admission, etc.

No. 11. 12 Geo. III. c. 21. of one hundred Pounds for Money had and received to his Use; provided that such Action shall be commenced within the Space of one Year after the Cause of it shall have arisen, and not afterwards.

No. 12.

32 Geo. III. c. 58.—An Act for the Amendment of the Law in Proceedings upon Information in Nature of *Quo Warranto.*

32 Geo. III. c. 58. Preamble.

'WHEREAS it would greatly tend to secure the Freedom of 'Election, and the Quiet, Tranquillity, and good Order of 'Cities, Boroughs, and Towns Corporate, if a certain reasonable 'Limitation of Time should be by Law established, beyond which 'no Member or Officer of any City, Borough, or Town Corporate, 'should be disturbed in the Enjoyment or Exercise of his Office or 'Franchise which he should have held and enjoyed for such Time:' Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the first Day of *Trinity* Term, in the Year One Thousand Seven Hundred and Ninety-three, it shall and may be lawful for the Defendant or Defendants to any Information in the Nature of a *Quo Warranto,* for the Exercise of any Office or Franchise in any City, Borough, or Town Corporate, whether exhibited with Leave of the Court, or by his Majesty's Attorney General, or other Officer of the Crown on Behalf of his Majesty, by virtue of any Royal Prerogative or otherwise, and each and every of them severally and respectively, to plead that he or they had first actually taken upon themselves, or held or executed the Office or Franchise which is the Subject of such Information, six Years or more before the exhibiting of such Information, such six Years to be reckoned and computed from the Day on which such Defendant so pleading was actually admitted and sworn into such Office or Franchise; which Plea shall and may be pleaded either singly, or together with and besides such Plea as he or they might have lawfully pleaded before the passing of this Act, or such several Pleas as the Court on Motion shall allow; (1) and if, upon the Trial of such Information, the Issue joined upon the Plea aforesaid shall be found for the Defendant or Defendants, or any of them, he or they shall be intitled to Judgment, and to such and the like Costs as he or they would by Law have been intitled to, if a Verdict and Judgement had been given for him or them upon the Merits of his or their Title.

From the first Day of Trinity Term, 1793, Defendants to Informations in the Nrture of Quo Warranto, for the Exercise of any Office may plead the holding it six Years or more, etc.

II. Provided always, and be it enacted, That in every such Case the Prosecutor of such Information may reply to such Plea, any Forfeiture, Surrender, or Avoidance, by the Defendant, of such Office or Franchise happening within six Years before the Exhibition of such Information, whereon the Defendant may take Issue, and shall be intitled to Costs in Manner aforesaid.

Forfeiture of Office within six Years before Information, may be replied to such Plea.

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(1) This Statute, as well as 9 Anne, c. 20, extends only to Corporate Offices; and therefore, in an Information against a Portreeve appointed at a Court Leet, the Defendant cannot plead double, although a returning Officer of Members of Parliament.—Rex *v.* Richardson, 9 East, 469.

III. And be it further enacted by the Authority aforesaid, That if any Person or Persons against whom any such Information as aforesaid shall be exhibited, shall derive Title under an Election, Nomination, Swearing into Office, or Admission by any Person or Persons, the Title of such Person or Persons against whom such Information shall be exhibited, shall not be defeated or affected by Reason, or on Account of any Defect in the Title of such Person or Persons so electing, nominating, swearing into Office, or admitting, in case such Person or Persons under whom Title shall be derived as aforesaid, was or were in Exercise *de facto* of the Franchise or Office, (in virtue of which he or they so elected, nominated, sworn in, or admitted,) at a Period six Years at least previous to the Time of filing such Information, and his or their Title shall not have been questioned by any legal Proceeding carried on with Effect.

No. 12. 32 Geo. III. c. 58. Title derived under derived under an Election not to be affected on Account of Defect in the Title of the Person electing, if he was in the Exercise of his Office six Years previous to the Information.

IV. And be it further enacted by the Authority aforesaid, That the Mayor, Bailiff, Sheriff, Town Clerk, or other Officer of any Corporation, having the Custody of, or Power over, the Records of the same, shall, upon the Demand of any Person, being an Officer or Member of such Corporation, on the Payment of One Shilling, permit such Person, on any Day or Days except *Christmas Day*, *Good Friday*, and *Sunday*, between the Hours of Nine in the Morning and Three in the Afternoon, to inspect the Books and Papers wherein the Admission or Swearing-in of the Freemen, Burgesses, or other Members or Officers of such Corporation, shall be entered, and to have Copies or Minutes of the Admission, or the Entry of Swearing-in of any one or more of such Freemen, Burgesses, or other Members or Officers, upon paying Sixpence for every One Hundred Words for Writing the same; and if such Mayor, Bailiff, Sheriff, Town Clerk, or other Officer, shall refuse or deny to any Person, hereby intitled to demand it, the Inspection of such Books or Papers, or to have Copies or Minutes thereof as aforesaid, such Mayor, Bailiff, Sheriff, Town Clerk, or other Officer, shall, for every such Offence, forfeit and pay the Sum of One Hundred Pounds, together with full Costs of Suit to him, her, or them, who shall inform and sue for the same within one Year after such Offence committed, by Action of Debt, Bill, Plaint, or Information, in any of his Majesty's Courts of Record at *Westminster*, wherein no Essoin, Protection, Wager of Law, nor more than one Imparlance, shall be allowed.

Officer having the Custody of Corporation Records to permit any Member thereof to inspect the Book of Admission of Freemen, etc. on Penalty of 100l.

End of Part First.

PART II.



REAL ESTATES.

Part II. Class I

MISCELLANEOUS STATUTES.

[In this Class are contained some of the most important Statutes relating to Real Property; amongst others, the Statute de Donis—the Statute of Quia Emptores—the Act for abolishing Feudal Tenures—the Statute of Frauds—and the Act for the Amendment of the Law, with others which I could not in a Manner satisfactory reduce under any common Title The more particular Classes intended to be introduced in the present general Division are the following, viz. 1. Tithes—2. Commons—3. Joint-tenants, &c. and herein of Partition—4. Mortmain—5. Conveyances by Infant Trustees, Femes Covert and Lunatics, Mortmain and Charitable Uses—6. Fraudulent Conveyances—7. Leases—8. Uses—9. Fines and Recoveries—10. Wills—11. The Land Revenue of the Crown, so far as it is connected with private Titles.

The Statutes relating to Landlord and Tenant will be inserted with those concerning Distresses and Replevins, under Part IV.

And the present Class is intended to include all such Statutes concerning Real Property as are not referrable to the particular Subjects above enumerated.]

No. 1.

9 Henry III. c. 7.—A Widow shall have her Marriage, Inheritance, and Quarantine. The King's Widow, &c.

VIDUA post mortem mariti sui statim & sine difficultate aliqua habeat maritagium suum & hereditatem suam nec aliquid det pro dote sua [d] nec pro maritagio suo vel pro hereditate sua quam hereditatem maritus suus & ipsa tenuerunt [e] simul die obitus ipsius mariti [f] sui & maneat in capitali Mesuagio mariti sui per quadraginta dies post obitum mariti sui infra quos dies assignetur ei dos sua nisi prius fuerit ei assignata vel nisi domus illa sit Castrum & si de castro recesserit domus ei competens statim provideatur in qua possit honeste morari quousque dos sua ei assignetur [g] secundum quod predictum est & habeat

'A WIDOW, after the Death of her Husband, incontinent, and without any Difficulty, shall have her Marriage, and her Inheritance, (2) and shall give Nothing for her Dower, her Marriage, or her Inheritance, which her Husband and she held the Day of the Death of her Husband, (3) and she shall tarry in the chief House of her Husband by forty Days after the Death of her Husband, within which Days her Dower shall be assigned her (if it were not assigned her before) or that the House be a Castle; (4) and if she depart from the Castle, then a competent House shall be forthwith provided for her, in which she may honestly dwell, until her Dower be to her assigned, as it is aforesaid; and she shall have in the

9 Hen. III c. 7.
Hobart 153
Dyer f. 76.
Plow. 32
Bro. Dower, 101.
Regist. fol 175.
Co Lit. 32. b.
2 Inst. 16.
19 Hen. VI. f. 14.

No. 1.
9 Hen. III. c. 7.
See 17 Ed II c. 4. for the Oath of Widows who hold in Capite, not to marry without the King's Licence.
* Add While she chooses to live single
Fitz Dower, 194, 196. Enforced and amended by 20 Hen III. c. 1. which gives Damages to the Widows who are deforced of their Dowers.

'mean Time her reasonable estovers of the common; (5) and for her Dower shall be assigned unto her the third Part of all the Lands of her Husband, which were his during Coverture, except she were endowed of less at the Church-door. (6) No Widow shall be distrained to marry herself: * nevertheless she shall find Surety, that she shall not marry without our Licence and Assent (if she hold of us) nor without the Assent of the Lord, if she hold of another.'

rationabile estoverium suum interim: de communi Assignetur autem ei pro dote sua tertia pars totius terre mariti sui que sua fuit in vita sua nisi de minori fuerit dotata ad Hostium ecclesie. Nulla vidua distringatur ad se maritandam dum voluerit vivere sine marito Ita tamen quod securitatem faciet quod se non maritabit sine assensu nostro si de nobis tenuerit vel sine assensu domini sui si de alio tenuerit.

No. 2.

20 Henry III. c. 1.—A Woman shall recover Damages in a Writ of Dower.

20 Hen. III. c. 1.
Dyer 284. pl. 35
4 Co. 30.
14 H. 8. 25.
38 Ed. 3. 15.
11 H. 4. 39.
Fitz. Dower. 24, 46, 59, 73.
Fitz. Damage, 10, 85, 119.
V. N. B. fo. 7.
Rast. Ent. 22.
Co. Lit. 32. b.

'FIRST, Of Widows which after the Death of their Husbands are deforced of their Dowers, and cannot have their Dowers or Quarantine without Plea, whosoever deforce them of their Dowers or Quarentine of the Lands, whereof their Husbands died seised,* and that the same Widows after shall recover by Plea; (2) they that be convict of such wrongful Deforcement shall yield Damages to the same Widows; that is to say, the Value of the whole Dower to them belonging, from the Time of the Death of their Husbands unto the Day that the said Widows, by Judgement of our Court, have recovered Seisin of their Dower, &c. (3) and the Deforcers nevertheless shall be amerced at the King's Pleasure.'

2 Inst. 80.
9 H. 3. stat. 1. c. 7.

DE viduis vero I. que post mortem virorum suorum expelluntur de dotibus suis & dotes suas, vel quarentenam habere non possunt sine placito videlicit quod quicunque deforciaverit eis dotes suas vel quarentenam suam de tenementis de quibus viri sui obierunt seisiti & ipse vidue postea per placitum recuperaverint ipsi qui de injusto deforciamento convicti fuerint reddant eisdem viduis dampna sua videlicit valorem totius dotis eas contingentis a tempore mortis virorum suorum usque ad diem quo ipse vidue per judicium curie seisinam suam inde recuperaverint nichilominus ipsi deforciatores sint in misericordia *domini* regis.

(*) It is observable that this Statute only gives Damages (to which by the Statute of Gloucester, Costs are incident) of Lands whereof the Husband died seised, which seems to obviate an Objection that is made to the accepting a Title in which there is a Protection against Dower by the Assignment of a satisfied Term, and which Objection supposes that notwithstanding Judgment is given with a Cesset executio, the Defendant will be liable to Costs. As to the Demand necessary to entitle a Widow to Damages, see 1 Inst. 32. Corsellis v. Corsellis, Bull. N. P. 117. but in several Cases, Damages have been given from the Death of the Husband. Belfield v. Rowse, 1 Inst. 33. a. Dobson v. Dobson, Ca. Temp. Hard. 19.

A Widow may now in all Cases have Relief in Equity for Recovery of Dower, Mundy v. Mundy, 2 Vesey, Jun. 122. which is the usual Course, and the Writ of Dower may be considered as having almost fallen into disuse.—Upon a Bill, the Court will decree an Account from the Husband's Death. Mundy v. Mundy, ubi sup.

No. 3.

20 Henry III. c. 2.--Widows may bequeath the Crops of their Lands.

II. ITEM, omnes vidue de cetero possunt legare blada sua de terra sua, tam de dotibus suis, quam de aliis terris & tenementis suis: salvis servitiis dominorum, que de dotibus & aliis tenementis suis debentur.

ALSO from henceforth Widows may bequeath the Crop of their Ground, as well of their Dowers, as of other their Lands and Tenements, saving to the Lords of the Fee, all such Services as be due for their Dowers and other Tenements.'

20 Hen. III. c. 2.
Kel. 125.
Fitz. Bar. 149. 294.
2 Inst. 80

No. 4.

52 Henry III. c. 17.—The Authority and Duty of Guardians in Socage

PROVISUM est etiam, quod si terra, que tenetur in socagio, sit in custodio parentum heredum eo quod [*ille dum*] heres infra etatem extiterit, custodes illi [*illius*] vastum facere non possunt, vel vendicionem, vel aliquam destruccionem de hereditate illa, sed salvo eam custodiant ad opus dicti heredis, Ita quod cum ad legitimam etatem pervenerit, sibi respondeant de exitibus dicte hereditatis, per legitimam computationem, salvis ipsis custodibus rationabilibus misis suis. Nec etiam possunt dicti custodes dicti heredis maritagium dare vel vendere, nisi ad commodum dicti heredis: set si parentes dicti heredis propinquiores qui hujusmodi custodias habuerint, de toto tempore illo, a quo brevia placitandi non conceduntur, hujusmodi custodias habeant ad commodum heredis, ut predictum est, sine vasto, vel exilio, vel destruccionibus faciendis.

'IT is provided, That if Land holden in Socage be in the Custody of the Friends of the Heir, because the Heir is within Age, the Guardians shall make no Waste, nor Sale, nor any Destruction of the same Inheritance; but safely shall keep it to the Use of the said Heir, so that when he cometh to his lawful Age, they shall answer to him for the Issues of the said Inheritance by a lawful Accompt, saving to the same Guardians their reasonable Costs. (2) Neither shall the said Guardians give or sell the Marriage of such an Heir, but to the Advantage of the foresaid Heir; (3) But the next Friends which had the Ward, for all that Time that Writs of impleading did not lie, shall have such Wardship unto the Advantage of the Heir, as is said before, without Waste, Sale, or Destruction making.' (*)

52 Hen. III. c. 17
Fitz. Wast. 1, 9, 100, 107.
Fitz. Present. 10.
Fitz. Brief, 847.
Fitz Accompt, 35, 59, 60, 77, 107.
Co. Lit. 87, a.
Co. Ent. 47.
2 Inst. 135.
Rast. 21.

(*) A Guardian in Socage has an Interest, and may make a Lease of the ..... of the Ward. The Husband of Guardian in Socage acquires the Guardianship, but his Lease is only good during the Coverture. Osborne v. Carden. Plowden, 293. In that Case, the Quality of Guardian in Socage is particularly discussed. Guardians in Socage may grant the Reversion of a Copyhold according to the Custom of the Manor which binds the Lord. Stopland v. Rudlen, Owen 115. Godb. 1. S. C. Cro. Sac. 35, 98. by the Name of Shopland and Ryder. He may avow in his own Name and Right, 34 Ed. III. 298. 7 Edw. III. 38. He may bring Trespass or Ejectment in his own

No. 4. 52 Hen. III. c. 17. Name. Per. Cur. Wade v. Baker. 1 Lord Raymond, 130. The Right of the Mother as Guardian in Socage, cannot be set up against the Lord of a Copyhold claiming as Guardian by Custom, Id. Possession of a Mother as Guardian in Socage is the Possession of the Heir, and prevents the Descent to the Half-Blood. Goodtitle v. Newman, 3 Wils. 516. Doe v. Skeen, 7 T. R. 326. See Bedell v. Constable, Vaughan 182. Rex v. Inhabitants of Oakley, 10 East, 491. See also Stat. 12 Charles II. chap. 24. Post in this Division, and Notes, ibid.

No. 5.

4 Edward I. c. 6.—By what Words in a Feoffment a Feoffer shall be bound to Warrancy.

4 Edward I. c. 6.

Dyer 15, 221.
1 Co. 1, 1.
3 Co. 58.
4 Co. 81.
5 Co. 17.
8 Co. 51.

'IN Deeds also where is contained *Dedi & concessi tale tenementum* without Homage, or 'without a Clause that containeth 'Warranty, and to be holden of 'the Givers, and their Heirs, by a 'certain Service; it is agreed, that 'that the Givers, and their Heirs, 'shall be bounded to Warranty. '(2) And where is contained '*Dedi & concessi, &c.* to be 'holden of the chief Lords of the 'Fee, or of other, ‡ *and not of* 'Feoffers, or of their Heirs, reserving no Service, without Homage, or without the foresaid 'Clause, their Heirs shall not be 'bounden to Warranty, notwithstanding the Feoffer during his 'own Life, by Force of his own 'Gift, shall be bound to warrant.

‡ Read, Than the Feoffor, &c.

IN cartis autem, ubi continetur dedi et concessi tale tenementum, sine homagio, vel sine alia clausula continente Warantiam, & tenend' de donatoribus & heredibus suis per certa servicia; concordatum est per eosdem, quod donator & heredes sui teneantur ad warantizand'. Ubi autem continetur dedi concessi, tenend' de capitalibus dominus, aut de aliis quam de feoffatoribus vel heredibus suis, nullo servicio sibi retento, sine homagio, vel sine dicta clausula, heredes sui non teneantur ad warantizand'; ipse tamen feoffator [*in vita sua*] ratione doni sui proprii, teneatur ad warrantium.

(*) That the Word *Grant* in the Conveyance of an Estate of Freehold does not create a Warranty, is abundantly Clear from all the Authorities upon the Subject. See Co. Lit. 384.¶[a] Butler's Note, ibid. Spencer's Case, 5 Co. 18 although the Word *Give* has that Effect. I think it is rather to be regretted, that notwithstanding the unquestionable and settled Law in this Respect, those who are perfect Masters of the Subject give Countenance to the unfounded Scruples which are entertained concerning it, by declining to insert the Word *Grant* in Conveyances from Trustees. It is singular that a a Judge of so much Eminence as Mr. Justice Buller, should have stated that the Words *Grant* and *Enfeoff*, amount to a general Warranty in Law, and have the same Force and Effect, and should refer to Nokes's Case, 4 Rep. 80. as settling that Point. Browning v. Wright, 2 Bosanquet and Puller.—Nokes's Case relates to the Demise of a Term in which the Words *Demise* and *Grant* operate as a Covenant unless there is an express Covenant in which Case the general and implied Covenant of Law is restrained. A Practice has been lately introduced in Conveyancing, of declaring previous to the general Words of Conveyance, that the Party conveys "so far only as he can or may, and not further or otherwise, and that he intends only to pass his Interest and not to Warrant the Estate." I think the Practice should be discountenanced, as tending to introduce erroneous Opinions upon the Subject.

No. 6.

6 Edward I. c. 3.—An Alienation of Land by the Tenant by the Curtesy with Warranty shall be void.

ESTABLI est ensement qe si home aliene tenement qil tient par lei de Engleterre sun fiz ne seit pas barre par le fet sun pere par qi nul heritage ne lui est descendu a demander e recovrer par bref de mort de auncestre la seisine sa mere tut face la chartre sun pere mentiun qe lui e ses heirs seient tenuz a la garauntie. E si heritage lui seit descendu par sun pere dunqes seit il forclos de la value del heritage qe lui est descendu. E sin en tens apres heritage lui descent par mesme le pere dunqe avera le tenaunt vers lui recoverer de la seisne sa mere par bref de jugement qe istra des roules des Justices devaunt les quels le plai fu pleide e resomoundre sun garaunt si cum ad este fet en autre cas ou le garaunt vint en curt e dist qe rien ne lui est descendu de lui par qui fet il est vouche. En mesme la manere le issue del fiz par bref del ael cosin e del besael. Ensement en mesme la manere ne seit le hier la femme apres la mort le pere e le mere barre de action par le chartre sun pere si il demaunde le heritage ou le mariage la mere par bref de entre qe sun pere en tens sa mere aliena dunt nule fin est levee en la Curt le Rey.

'IT is established also, That if a Man aliene a Tenement, that he holdeth by the Law of *England*, his Son shall not be barred by the Deed of his Father (from whom no Heritage to him descended) to demand and recover by Writ of *Mortdauncestor*, of the Seisin of his Mother, although the Deed of his Father doth mention, that he and his Heirs be bound to Warranty. (2) And if any Heritage descend to him of his Father's Side, then he shall be barred for the Value of the Heritage that is to him descended. (3) And if in Time after any Heritage descend to him by the same Father, then shall the Tenant recover against him of the Seisin of his Mother by a judicial Writ that shall issue out of the Rolls of the Justices, before whom the Plea was pleaded, to resummon his Warranty, as before hath been done in Cases where the Warrantor cometh into the Court, saying, That Nothing descended from him by whose Deed he is vouched. (4) And in like Manner the Issue of the Son shall recover by Writ of *Cosinage, Aiel*, and *Besaiel*. (5) Likewise in like Manner the Heir of the Wife shall not be barred of his Action after the Death of his Father & Mother, by the Deed of his Father, if he demand by Action the Inheritance of his Mother by a Writ of Entry, which his Father did aliene in the Time of his Mother, whereof no Fine is levied in the King's Court.'

6 Edward I. c. 3.

Vaughan 366. Stat. 4 & 5 Ann. c. 16. Bro. Formedon, 73. 5 Co. 80. 8 Co. 52. Co. Lit. 365, 366, 381, a. 382. a. 383, a. b. Dyer, f. 148. Fitz. Garranty, 5. 9 Co. 26. Fitz. Cui in vita, 7, 8.

Keilw. 104. & 124, 125.

2 Inst. 292

No. 7.

6 Edward I. c. 5.—Several Tenants against whom an Action of Waste is maintainable.

6 Edward I. c. 5.

Dyer 25.
Fitz. Wast, 62, 117, 146.
Bro. Parl. 17
Fitz. Judgment, 85, 134, 255.
Fitz. Damage, 7, 22, 42, 52, 90, 114, 133.
Co. Inst 53. b. 54. b. 200. b. 355. b.
1 Roll. 91, 97, 156.
Rast. 689, &c.
Savill 42.
9 H. 3, stat. 1. c. 3. 52 H. 3. c 23.

IT is provided also, That a Man from henceforth shall have a Writ of Waste in the Chancery against him that holdeth by Law of *England*, or otherwise for Term of Life, or for Term of Years, or a Woman in Dower. (2) And he which shall be attainted of Waste, shall leese the Thing that he hath wasted, and moreover shall recompense thrice so much as the Waste shall be taxed at. (3) And for Waste made in the Time of 'Wardship it shall be done as is 'contained in the Great Charter. '(4) And where it is contained in 'the Great Charter, that he which 'did waste during the Costody, 'shall leese the Wardship, (5) it 'is agreed that he shall recompense the Heir his Damages for the Waste, if so be that the Wardship lost do not amount to the Value of the Damages before the Age of the Heir of the same Wardship.'

Regist. 72.
2 Inst. 299.

ENSEMENT purveu est qe lem cit deforemes bref de Wast en la Chauncelrie fait de ceo sur home qi tient par la lei de Engleterre ou en autre manere a terme de vie ou a terme de annz ou femme en doweire. e celui qui serra atient de wast perde la chose qil ad wastee e estre ceo face gre del trebble de ceo qe le wast serra taxe. E endreit de wast fet en garde seit fait solom ceo qe il est contenu en le graunt chartre. E par la ou il est contenue en la graunt chartre qe celui qi avera fet wast en garde perde la garde Acorde est qe il rende il heir les damages del wast si issi ne seit qe la garde perdue ne suffice my a la value des damages avaunt le age del heir de mesme la garde. (*)

(*) The real Action of Waste has so entirely fallen into Disuse, that the Case of the Keepers, &c. of Harrow School v. Anderton, 2 B. and P. 86. is probably the only Instance of it remembered by Lawyers now living.—The Action on the Case, in the Nature of an Action of Waste is now commonly substituted for the ancient Remedy, and will lie between Persons between whom the proper Action of Waste is not maintainable, but in Gibson v. Wells, 1 N. R. 290. it was ruled that this Action does not lie in the Case of permissive Waste, which Authority, if admitted to be Law, may render it still necessary to resort to the former Proceeding. A more effectual Remedy against voluntary Waste, is in many Cases attainable by Injunctions in Equity. In the above mentioned Case of Harrow School v. Anderton, the Court of Common Pleas, upon the Authorities there cited, gave Judgment for the Defendant, on Account of the Damages recovered by the Plaintiff.

No. 8.

13 Edward I. c. 1.—In Gifts in Tail the Donor's Will shall be observed. The Form of a *Formedon*.

IN primis de tenementis que multotiens dantur sub conditione videlicit cum aliquis dat terram suam alicui viro & ejus uxori & heredibus de ipsis viro et muliere procreatis adjecta conditione expressa tali quod si hujusmodi vir & mulier sine herede de ipsis viro & muliere procreato obissent terra sic data ad donatorem vel ad ejus heredem revertatur. In casu etiam cum cuis dat tenementum in liberum maritagium quod donum habet conditionem annexam licet non exprimatur in carta doni que talis est quod si vir & mulier sine herede de ipsis procreato obierint tenementum sic datum ad donatorem vel ad ejus heredem revertatur. In casu etiam cum quis dat tenementum alicui & heredibus de corpore suo exeuntibus durum videbatur & adhuc videtur hujusmodi donatoribus & heredibus donatorum quod voluntas ipsorum in donis suis expressa non fuerit prius nec adhuc est observata. In omnibus enim predictis casibus post prolem suscitatam & exeuntem ab ipsis quibus tenementum sic fuit datum conditionaliter hucusque habuerunt hujusmodi feoffati potestatem alienandi tenementum sic datum & exheredandi de tenemento exitum ipsorum contra voluntatem donatorum & formam de dono expressam. Et preterea cum deficiente exitu de hujusmodi feoffatis tenementum sic datum ad donatorem vel ad ejus heredem reverti debuit per formam in carta de dono expressam licet exitus si quis fuerit obisset per factum & feoffamentum ipsorum quibus tenementum sic fuit datum sub conditione exclusi fuerunt hucus-

'FIRST, Concerning Lands that many Times are given upon Condition, that is to wit, Where any giveth his Land to any Man and his Wife, and to the Heirs begotten of the Bodies of the same Man and his Wife, with such Condition expressed, that if the same Man and his Wife die without Heirs of their Bodies between them begotten, the Land so given shall revert to the Giver or his Heir. (2) In Case also where one giveth Lands in free Marriage, which Gift hath a Condition annexed, though it be not expressed in the Deed of Gift, which is this, That if the Husband and Wife die without Heir of their Bodies begotton, the Land so given shall revert to the Giver or his Heir. (3) In Case also where one giveth Land to another, and the Heirs of his Body issuing; it seemed very hard, and yet seemeth to the Givers and their Heirs, that their Will being expressed in the Gift, was not heretofore, nor yet is observed. (4) In all the Cases aforesaid, after Issue begotton and born between them (to whom the Lands were given under such Condition) heretofore such Feoffees had Power to aliene the Land so given, and to disherit their Issue of the Land, contrary to the Minds of the Givers, and contrary to the Form expressed in the Gift. (5) And further, When the Issue of such Feoffee is failing, the Land so given ought to return to the Giver, or his Heir, by Form of the Gift expressed in the Deed, though the Issue (if any were) had died: (6) Yet by the Deed and Feoffment of them (to whom Land was so given upon Condition) the Donors have heretofore been barred of

13 Edward I. c. 1.

No. 5.

Several Sorts of Gifts of Lands in Tail.

1 Leon, 212.
1 Roll 48, 153, 158, 333, 357, 385.
2 Roll 429.
Godbolt 308, 367, pl. 458.
Vaughan 365.
Latch 67.
Savil 67, 88.
7 Co. 33.
Fitz. Tail, 11, 12, 13, 14, 16, 17, 18, 21, 22, 23. Co. Lit. 18. b. 19. a. 24. a. 223. b. 224. a.
12 Co 81.
Fitz. Formed. 61, 65.
Fitz. Tail, 9, 10.

Fitz. Tail, 15.

No. 8.
13 Edward I. c. 1.

- Add, of the same Tenements.

In Gifts in Tail the Donor's Will shall be observed.
Hob. 293.
Fitz. Garranty, 16, 46, 57, 59.
3 Co. 85.
Fitz. Formed. 1, 27, 33, 35, 52, 54, 59, 62, 64.

† For whereas read in that.

Fitz Dower, 87.
3 Co. 8.
5. 14.
7. 32, 33.
8. 35, 86. 166.
9. 105.
11. 72.
Co. Lit. 327.

'their Reversion,* which was 'directly repugnant to the Form 'of the Gift.

'II. Wherefore our Lord the 'King, perceiving how necessary 'and expedient it should be to 'provide Remedy in the aforesaid 'Cases, hath ordained, That the 'Will of the Giver, according to 'the Form in the Deed of Gift 'manifestly expressed, shall be 'from henceforth observed; so 'that they to whom the Land 'was given under such Condition, 'shall have no Power to aliene 'the Land so given, but that it 'shall remain unto the Issue of 'them to whom it was given after 'their Death, or shall revert unto 'the Giver, or his Heirs, if Issue 'fail († *whereas* there is no Issue 'at all) or if any Issue be, and 'fail by Death, or Heir of the 'Body of such Issue failing. '(2) Neither shall the second Husband of any such Woman, 'from henceforth, have any Thing in the Land so given upon Condition, after the Death of his 'Wife, by the Law of *England*, 'nor the Issue of the second Husband and Wife shall succeed in 'the Inheritance, but immediately 'after the Death of the Husband 'and Wife (to whom the Land 'was so given) it shall come to 'their Issue, or return unto the 'Giver, or his Heir, as before is 'said.

que de reversione eorundem tenementorum quod manifeste fuit contra formam doni sui.

Propter quod dominus Rex perpendens quod necessarium & utile est in predictis casibus apponere remedium statuit quod voluntas donatoris secundum formam in carta doni sui manifeste expressam decetero observetur ita quod non habeant illi quibus tenementum sic fuit datum sub conditione potestatem alienandi tenementum sic datum quo minus ad exitum illorum quibus tenementum sic fuerit datum remaneat post eorum obitum vel ad donatorem vel ad ejus heredem si exitus deficiat per hoc quod nullus sit exitus omnino vel si aliquis exitus fuerit per mortem deficiet herede hujosmodi exitus deficiente. Nec habeat decetero secundus vir hujusmodi mulieris aliquid in tenemento sic dato per conditionem post mortem uxoris ejus per Legem Anglie nec exitus de secundo viro & muliere successionem hereditariam set statim post mortem viri & mulieris quibus tenementum sic fuit datum post eorum obitum vel ad eorum exitum vel ad donatorem vel ad ejus heredem ut predictum revertatur.

'III. And forasmuch as in a 'new Case new Remedy must be 'provided, this Manner of Writ 'shall be granted to the Party that 'will purchase it:'

Et quia in novo casu novum remedium est apponendum fiat impetranti tale breve:

Formedon in discender.
Regist 238.
Co. pla. 317, 338, 341.
Dyer 216, 247.
Fitz. Fines, 125.
Fitz. Formed. 5, 6, 7, 11, 12, 22, 30, 42, 44, 46. 47, 49.

(2) Præcipe A. quod juste, &c. reddat B. manerium de F. cum suis pertinentiis, quod C. dedit tali viro & tali mulieri, & heredibus de ipsis viro & muliere exeuntibus.

Precipe A. quod juste, &c. reddat B. tale manerium cum pertinentiis quod C. dedit tali viro et tali mulieri et heredibus de ipsis viro et muliere exeuntibus.

' Or thus:'

Vel,

(3) Quod C. dedit tali viro in liberum maritagium cum tali muliere, & quod post mortem prædictorum viri & mulieris, predicto B. filio eorundem viri & mulieris descendere debeat per forman donationis prædictæ, ut dicit, &c. (4) Vel, Quod C. dedit tali et

* *Quod C. dedit tali viro in liberum maritagium cum tali muliere et quod post mortem predictorum viri et mulieris predicto B filio predictorum viri et mulieris descendere debet per formam donationis predicte ut dicit.* Vel, *Quod C. dedit tali et heredibus*

de corpore suo exeuntibus et quod post mortem ipsius talis predicto B. filio predicto talis descendere debet per formam, etc.

Breve per quod donator habet recuperare suum deficiente exitu satis est in usu in cancellaria Et sciendum quod hoc statutum quoad alienationem tenementi contra formam doni imposterum faciendam locum habet & ad dona prius facta non extenditur. Et si finis super hujusmodi tenemento imposterum levetur ipso jure sit nullus nec habeant heredes aut illi ad quos spectat reversio licet plene sint etatis in Anglia & extra prisonam necesse apponere clameum suum.

hæredibus de corpore suo exeuntibus, et quod post mortem illius talis, prædicto B fillio prædicti talis descendere debeat per formam, &c.

No. 8.
13 Edward I c. 1.

'IV. The Writ whereby the Giver shall recover (when Issue faileth) is common enough in the Chancery; (2) and it is to wit, that this Statute shall hold Place touching Alienation of Land contrary to the Form of the Gift hereafter to be made, and shall not extend to Gifts made before. (3) And if a Fine be levied hereafter upon such Lands, it shall be void in the Law; (4) neither shall the Heirs, or such as the Reversion belongeth unto, though they be of full Age, within *England*, and out of Prison, need to make their Claim. Altered by 32 H. 8. c. 36.'

A Fine shall not bar the Heir in Tail.
8 H. 4. f. 8.
Fitz. Continual Claim, 9.

No. 9.

18 Edward I. c. 1.—The Feoffee shall hold his Land of the chief Lord, and not of the Feoffer. (1)

Cotton *MS.* *Claudius*, D. 2:

QUIA emptores terrarum et tenementorum de feodis Magnatum & aliorum in prejudicium eorumdem temporibus retroactis multotiens in feodis suis sint ingressi quibus libere tenentes eorumden Magnatum & aliorum

18 Edward I. c. 1.
1 Roll 106.

"FORASMUCH as Purchasers "of Lands and Tenements of "the Fees of great Men and other "Lords, have many Times here"tofore entered into their Fees, "to the Prejudice of the Lords, "to whom the Freeholders of

(1) For the general Exposition of this important Act, see 2 Institutes 500. The two following modern Cases have been decided upon the Effect of it. Bradshaw v. Lawson, 4 T. R. 443. Lands held of the Lord of the Manor by customary Tenure were enfeoffed by the Lord to the Tenant in Fee-farm, subject to a yearly Rent, in Lieu of all Manner of other Rents, Suits, Services, Exactions and Demands. By a subsequent Deed it was recited, that as a Consideration for the former it was agreed that the Feoffee and all others who should hold his Estate, should do Suit and Service, and appear at Courts Baron, and be subject to Fines and Amerciaments assessed by the Homage; and the Party to the Deed (the Heir of the original Feoffee) covenanted in Default of performing Suit and Service to pay 2s. 6d. And it was decided that an Action of Debt for the Amerciament of 2s. 6d. for not attending the Court could not be maintained. Lord Kenyon said, The Lord conveyed the Property of which the Defendant is now seised to the Defendant's Ancestor a customary Tenant. But it has been said that the old Services were reserved by the Reservation of the Fee-farm Rent; but if the Relation of Lord and Tenant absolutely ceased to exist, that Rent can no longer be considered as Rent Service, but a Rent to be recovered according to the Contract between the Parties. After the Statute of Quia emptores, the Lord could not by any Deed reserve the old Services when he conveyed away the Estate in Respect of which the Services were due, for the Tenant must hold of the superior

No. 9.
18 Edward I. c

"such great Men have sold their "Lands and Tenements to be "holden in Fee of their Feoffers, "and not of the chief Lords of "the Fees, whereby the same "chief Lords have many Times "lost their Escheats, Marriages, "and Wardships of Lands and "Tenements belonging to their "Fees; which Thing seemed very "hard and extream unto those "Lords and other great Men, and "moreover in this Case manifest "Disheritance:" '(2) Our Lord 'the King, in his Parliament at '*Westminster*, after *Easter*, the 'eighteenth Year of his Reign, 'that is to wit, in the Quinzime 'of Saint *John Baptist*, at the 'Instance of the great Men of the Realm, granted, provided, and ordained, That from henceforth it shall be lawful to every Free-'man to sell at his own Pleasure 'his Lands and Tenements, or 'Part of them, so that the Feof-'fee shall hold the same Lands or 'Tenements of the chief Lord of 'the same Fee, by such Service 'and Customs at his Feoffor held 'before.'

Fitz Avowry 108, 185, 255

12 Car. II. c. 24. takes away feodal services.

terras & tenementa sua vendiderunt temenda in feodo sibi & heredibus suis de feoffatoribus suis & non de Capitalibus dominis feodorum per quod iidem Capitales domini escaetas maritagia & custodias terrarum & tenementorum de feodis suis existentium sepius amiserunt quod eisdem Magnatibus & aliis dominis quam plurimis durum & difficile videbatur & similiter in hoc casu exheredatio manifesta: Dominus Rex in parliamento suo apud Westm' post Pascha Anno Regni sui decimo octavo videlicet in quindena sancti Johannis Baptiste ad instantiam Magnatum regni sui concessit providit & statuit quod de cetero liceat unicuique libero homini terram suam seu tenementum seu partem inde pro voluntate sua vendere. Ita tamen quod feoffatus teneat terram illam seu tenementum de Capitali domino per eadem servicia & consuetudines per que feoffator suus illa prius tenuit.

Lord. By the Conveyance the Estate was no longer Parcel of the Manor, nor held of the Manor, neither was the Defendant's Ancestor any longer a Tenant of the Manor.

Doe on the Demise of Reay v. Huntingdon, 4 East, 271. a customary or Tenant-Right Estate in Cumberland, not Devisable either directly or by Means of a Will, and Surrender being holden of the Lord of the Manor subject to customary Rents and other Services; the Lord, for certain Considerations, did Ratify and Confirm to the Tenant all his said customary Estate, and did grant that the Tenant should be discharged from all Rents, Fines, Heriots, Customs, Services and Demands, in Respect of his Tenancy, except one Penny yearly Rent, and excepting and reserving Suit of Court with the Service incident thereto; the Lord reserving all Royalties, Escheats and Forfeitures, and all other Advantages and Emoluments belonging to the Seignory so far as might consist with and not be prejudicial to the aforesaid Immunities, with Liberty to the Grantee of cutting Timber and getting Stones, and alienating without Consent. It was contended in a most learned Argument, that the only Effect of the Deed was by Means of Covenants to compound for the Payment of certain Parts of the Rents, and for the Performance of certain burthensome Services; but excepting to the Lord the Remainder according to the ancient Tenure; and secondly, that if this were no longer the old customary Estate as between Lord and Tenant, yet the collateral Customs as to Strangers might still remain; but it was decided that by the Operation of the Deed the immediate Customs by which the Tenement was distinguished from other Lands holden in free and common Socage had been extinguished, and the Land became devisable as any other Socage Land under the Statute of Wills. The Case contains a great Deal of important Learning respecting the Extinction of Tenure by the Release of Services, and affords one of the best Views which can be any where had of the customary Estates peculiar to the North of England, for which Border Services were anciently performed. See also Townley v. Gibson, 2 T. R. 424. Doe v. Davidson, 2 M. & S. 175.

No. 9.
18 Edward I. c. 1.

Cap. 2.—If Part of the Land be sold, the Services shall be apportioned.

ET si partem aliquam earumdem terrarum & tenementorum alicui vendiderit feoffatus illam teneat immediate de Capitali domino & oneretur statim de servicio quantum pertinet sive pertinere debet eidem Capitali domino pro particula illa secundum quantitatem terre seu tenementi venditi & sic in hoc casu decidat Capitali domino ipsa pars servicii per manum feoffati capienda ex quo feoffatus debet eidem Capitali domino juxta quantitatem terre seu tenementi venditi de particula illa servicii sic debiti esse intendens et respondens.

'AND if he sell any Part of such Lands or Tenements to any, the Feoffee shall immediately hold it of the chief Lord, and shall be forthwith charged with the Services, for so much as pertaineth, or ought to pertain to the said chief Lord for the same Parcel, according to the Quantity of the Land or Tenement so sold. (2) And so in this Case the same Part of the Service shall remain to the Lord, to be taken by the Hands of the Feoffee, for the which he ought to be attendant and answerable to the same chief Lord, according to the Quantity of the Land or Tenement sold for the Parcel of the Service so due.'

Dyer 299.
Fitz. Avowry, 101, 108, 218.
Fitz. Herriot, 1.
Bro. Tenures, 2. 65.
6 Co. 1.
8 Co. 105.
27 H. 8. f. 26.
40 Ed. 3. f. 40.
2 Inst. 503.

Cap. 3.—No Feoffment shall be made to assure Land in Mortmain.

ET sciendum est quod per predictas venditiones seu emptiones terrarum seu tenementorum seu partis alicujus eorumdem nullo modo possunt terre seu tenementa illa in parte vel in toto ad manum mortuam devenire arte vel ingenio contra formam statuti dudum super hoc editi. Et sciendum est quod istud statutum tenet locum de terris venditis tenendis in feodo simpliciter tantum & quod se extendit ad tempus futurum Et incipiet locum tenere ad Festum Sancti Andree Apostoli proxime futurum.

AND it is to be understood, that by the said Sales or Purchases of Lands or Tenements, or any Parcels of them, such Lands or Tenements shall in no wise come into Mortmain, either in Part or in Whole, neither by Policy ne Craft, contrary to the Form of the Statute made thereupon of late. (2) And it is to wit, that this Statute extendeth but only to Lands holden in Fee simple; (3) and that it extendeth to the Time coming, and it shall begin to take Effect at the Feast of Saint *Andrew* the Apostle next coming Given the eighteenth Year of the Reign of King EDWARD Son to King HENRY.'

2 Inst. 604.

9 H. 3. stat. 1. c. 32.*

* For c. 32, read 36.

No. 10.

11 Henry VII. c. 20.—Certain Alienations made by the Wife, of the Lands of her deceased Husband, shall be void.

11 H. VII. c. 20.

Hob. 289. 1 Leon. 261. 2 Leon. 169. 2 And. 44. 2 Roll. 417. 3 Co. 58. 5 Co. 80. Bro. Judg. 148, 153. Co. Lit. 326. b. 365. 366, 381. Cro. El. 2, 4, 24, 131, 513, 514. Cro. Jac. 174, 624. 3 Mod. 33. 4 Mod. 85.

FOR certain reasonable Considerations be it ordained, enacted, and established by the King our Sovereign Lord, and by the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, That if any Woman which hath had, or hereafter shall have, any Estate in Dower, or for Term of Life, or in Tail, jointly with her Husband, or only to herself, or to her Use, in any Manors, Lands, Tenements, or other Hereditaments of the Inheritance or Purchase of her Husband, or given to the said Husband and Wife in Tail, or for Term of Life, by any of the Ancestors of the said Husband, or by any other Person seised to the Use of the said Husband, or of his Ancestors, and have or shall hereafter, being sole, or with any other after taken Husband, discontinued or discontinue, aliened, released, or confirmed, aliene, release, or confirm with Warranty, or by Covin suffered or suffer any Recovery of the same against them, or any of them, or any other seised to their Use, or to the Use of either of them, after the Form aforesaid, that all such Recoveries, Discontinuances, Alienations, Releases, Confirmations, and Warranties so had and made, and from henceforth to be had and made, be utterly void and of none Effect: And that it shall be lawful to every Person and Persons, to whom the Interest, Title, or Inheritance, after the Decease of the said Women, of the said Manors, Lands, and Tenements, or other Hereditaments, being discontinued, aliened, and suffered to be recovered, after the First Day of *December* next coming, in the Form aforesaid, should appertain, to enter into all and every of the Premises, and peaceably to possess and enjoy the same, in such Manner and Form as he or they should have done, if no such Discontinuance, Warranty, nor Recovery had been had nor made.

Alienation by the Wife of the Inheritance of her deceased Husband, shall be void.

Upon the Recovery or Alienation of the Woman, he in the Reversion may enter.

2 And. 31. 1 Co. 102. 3 Co. 50, 58. 4 Co. 3. Dyer 111, 146, 248, 340, 354, 362. Hob. 341.

And over this be it ordained and enacted by the said Authority, That if any of the said Husbands and Women, or any other seised, or that shall be seised, to the Use of them of the Estate afore specified, after the said first Day of *December*, do make or cause to be made, or suffer any such Discontinuance, Alienations, Warranties, or Recoveries in Form aforesaid, that then it shall be lawful to the Person or Persons to whom the said Manors, Lands, or Tenements should or ought to belong after the Decease of the said Women, to enter into the same, and them to possess and enjoy, according to such Title and Interest as they should have had in the same, if the same Women had been dead, no Discontinuance, Warranty, nor Recovery had, as against the said Husband during his Life, if the said Discontinuance, Alienation, Warranties, and Recoveries be hereafter had by or against the same Husbands and Women during the Coverture and Espousal betwixt them. Provided alway, That the said Women, after the Decease of their said Husbands, may re-enter into the same Manors, Lands, and Tenements, and them to enjoy according to their first Estate in the same.

A Woman Covert bound but during her Husband's Life.

2 Bulst. 42.

And over this be it ordained and enacted by the said Authority, That if the said Women at the Time of such Discontinuance, Alienations, Recoveries, Warranties, after the said first Day of *December*, in Form aforesaid, to be had and made of any of the Premises, be sole, that then she shall be barred and excluded of her Title and Interest in the same from thenceforth; and that the Person and Persons to whom the Title, Interest, and

A Woman sole aliening, or suffering a Recovery.

Possession of the same should belong after the Decease of the said Woman, shall immediately after the said Discontinuances, Alienations, Warranties, and Recoveries, enter into the same Manors, Lands, Tenements, and other Hereditaments, and them to possess and enjoy according to his or their Title in the same. Provided also, That this Act extend not to avoid any Recovery, Discontinuance, or Warranty after the Form aforesaid, afore this Time had, made, and suffered, but only where the said Husband and Woman, or either of them now being alive, or any other to their Use, now have Entries and Title to the said Manors, Lands, Tenements, or other Hereditaments, aliened, discontinued, or suffered to be recovered after the Form aforesaid, and thereof now taking the Issues and Profits, or any other Person or Persons to their Use. Provided also, that this Act extend not to any such Recovery or Discontinuance to be had where the Heirs next inheritable to the said Woman, or he or they that next after the Death of the same Woman should have Estate of Inheritance in the same Manors, Lands, or Tenements, be assenting or agreeable to the said Recoveries, where the same Assent and Agreement is of Record, or inrolled. Provided also, That it shall be lawful to every such Woman being sole, or married after the Death of her first Husband, to give, sell, or make Discontinuance of any such Lands for Term of her Life only, after the Course and Use of the Common Law before the making of this present Act. (1)

No. 10.
11 H. VII. c. 20.

A Proviso for a Recovery had before the Time of the Statute.

A Woman doth discontinue or suffer Recovery with the Heir's Consent.

A Woman may aliene her Land for the Term of her Life only.

(1) In Eyston v. Studde, Plowden 459, it was held, that where a Husband and Wife seised in Right of the Wife, levied a Fine to a third Person who rendered the Land to the Husband and Wife, and the Heirs of their Bodies, the Disposition of the Wife after the Death of the Husband was not within the Operation of the Statute, although within the Words as a Purchase by the Husband "for many Times, Things within the Words of a Statute are out of the Purview, for the Purview does not extend beyond the Intent of the Makers. And the Intent is more to be weighed than the Words of Acts, and the Intent here was that where Women have Jointures which proceed originally from their Husbands, or the Ancestors of their Husbands, to restrain them from causing Disherison or other Injury, to the Heirs of their Husbands, and therefore a Person ought not to rest on the Letter, or suppose that wherever he has the Letter, he has the Law in his Favour."—And a very valuable and elaborate Note is subjoined to the Case respecting the Principles on which a more enlarged or restricted Sense ought to be given to the Words of a Statute in Order to answer the Intent. For the general Exposition of this Statute, see Gilb. Uses and Trusts, 339, [157] with Mr. Sugden's Notes from which the following Summary is taken.

The Statute does not extend to a Case where a Wife before Marriage conveys to the Ancestor of the intended Husband who reconveys to the Husband and Wife in Tail, Plowden, ibid. or to a Rent granted by the Conusee of a Fine of the Wife's Land, Foster v. Pitfall, Cro. Eliz. 2. Nor will the Husband, paying a Sum of Money to the Wife's Father vary the Case. Semble Copland v. Pigot. Neither does the Statute extend to a Gift by a Stranger, although in Consideration of Services rendered by the Husband. Ward v. Walthew, Cro. Jac. 153. Mo. 683, by the Name of Ward v. Sudman. See Cro. Car. 244.

The Statute does extend to a Settlement by the Husband or his Ancestors in Consideration of Marriage, although Money is also paid. Anon Mo. 93 Villers v. Lincoln, Dyer 146 a 1 Rep. 176 a Bendl. Ked 208 a Kirkman v. Thompson, Cro. Jac. 474, to a Settlement made by the Husband by Way of Feoffment and Reinfeoffment, Mo. ab. supr. to the Husband's Moiety of Lands, whereof the Husband and Wife are seised as Joint Tenants, Laughter v. Humphrey, Cro. Eliz. 524, and every Alienation contrary to the Spirit of the Statute is void, although not within the Letter of it, Piggot v. Palmer, Mo. 250. 3 Rep. 51 b. The Statute only applies to Cases where the Alienation necessarily tends to the Disherison of the Heirs of the Husband, and therefore not when the Remainder is limited to a Stranger with no Estate of Inheritance

No. 10.
11 H. VII. c. 20.

to the Husband or his Heirs, Foster v. Pitfall, Cro. Eliz. 2. 1 Leon, 261, or to the Wife in Fee. Dennis's Case, D. 248. R. v. Savage, mo. 715. or in Tail general. Hughs v. Clubb. 1 Com. 369. It does not extend to Cases where the Consent of the next Heir appears on Record, Lincoln Coll. Case 3 Co. 58 b. See Coatés v. Price, 12 Vesey 89. A Trust or Equity of Redemption is within the Statute, Clifton v. Jackson, 2 Vern. 489, Copyholds are not. Harrington v. Smith, 2 Sid. 41—73, aliter of a Copyhold whereof Husband and Wife are seised, and which is enfranchised for a money Consideration paid by the Husband. Stockbridge's Case, Cro. Eliz. 24.

No. 11.

21 Henry VIII. c. 4.—The Sale of Lands by Part of the Executors lawful.

21 H. VIII. c. 4.
2 Roll. 336.
Land devised to be sold by divers Executors, cannot by Common Law be sold by Part of them.
4 Ed. 3. c. 7.
9 Ed. 3. stat. 1. c. 3. 25 Ed. 3. stat. 5. c. 5.

'WHERE divers sundry Persons before this Time, having other Persons seised to their Use of and in Lands and other Hereditaments to and for the Declaration of their Wills, have by their last Wills and Testaments willed and declared such their said Lands, Tenements, or other Hereditaments to be sold by their Executors, as well to and for the Payments of their Debts, Performance of their Legacies, necessary and convenient finding of their Wives, virtuous bringing up and Advancement of their Children to Marriage, as also for other charitable Deeds to be done and executed by their Executors for the Health of their Souls. And notwithstanding such Trust and Confidence so by them put in their said Executors, it hath oftentimes been seen, where such last Wills and Testaments of such Lands, Tenements, and other Hereditaments have been declared, and in the same divers Executors named and made, that after the Decease of such Testators some of the same Executors, willing to accomplish the Trust and Confidence that they were put in by the said Testator, have accepted and taken upon them the Charge of the said Testament, and have been ready to fulfil and perform all Things contained in the same; and the Residue of the same Executors, uncharitably contrary to the Trust that they were put in, have refused to intermeddle in any wise with the Execution of the said Will and Testament, or with the Sale of such Lands so willed to be sold by the Testator. And forasmuch as a Bargain and Sale of such Lands, Tenements, or other Hereditaments so willed by any Person to be sold by his Executors after his Decease, after the Opinion of divers Persons, (1) can in no wise be good or effectual in the Law, unless the same Bargain and Sale be made by the whole Number of the Executors named to and for the same; by Reason whereof, as well the Debts of such Testators have rested unpaid and unsatisfied, to the great Danger and Peril of the Souls of such Testators, and to the great Hindrance, and many Times to the utter undoing of their Creditors: As also the Legacies and Bequests made by the Testator to his Wife, Children, and for other charitable Deeds to be done for the Wealth of the Soul of the same Testator that made the same Testament, have been also unperformed, as well to the extream Misery of the Wife and Children of the said Testator, as also to the Let of Performance of either charitable Deeds for the Wealth of the Soul of the said Testator, to the Displeasure of Almighty God.' For Remedy whereof, be it enacted, ordained, and established by the Authority of this present Parliament, That where Part of the Executors named in any such Testament of any such Person so making or

Part of the Executors, who take upon them the Charge of a Will, may sel. any Land devised by the Testator to be sold.
3 Cro. 80.
Br. Devise, 10, 31.
Co. Lit. 113. 1.

(1) In Withnell v. Gartham, 6 T. R. 396. Lord Kenyon infers from this Expression that the Act was passed rather to remove Doubts than to make a new Law.

declaring any such Will of any Lands, Tenements, or other Hereditaments to be sold by his Executors, after the Death of any such Testator, do refuse to take upon him or them the Administration and Charge of the same Testament and last Will wherein they be so named to be Executors, and the Residue of the same Executors do accept and take upon them the Cure and Charge of the same Testament and last Will; that then all Bargains and Sales of such Lands, Tenements, or other Hereditaments, so willed to be sold by the Executors of any such Testator, as well heretofore made, as hereafter to be made by him or them only of the said Executors that so doth accept, or that heretofore hath accepted and taken upon him or them any such Cure or Charge of Administration of any such Will or Testament, shall be as good and as effectual in the Law, as if all the Residue of the same Executors named in the said Testament, so refusing the Administration of the same Testament, had joined with him or them in the making of the Bargain and Sale of such Lands, Tenements, or other Hereditaments so willed to be sold by the Executors of any such Testator, which heretofore hath made or declared, or that hereafter shall make or declare any such Will, of any such Lands, Tenements, or other Hereditaments after his Decease, to be sold by his Executors.

No. 11. 21 H. VIII. c. 4.

II Provided alway, That this Act shall not extend to give Power or Authority to any Executor or Executors at any Time hereafter to Bargain or put to Sale any Lands, Tenements, or Hereditaments, by Virtue and Authority of any Will or Testament heretofore made, otherwise than they might do by the Course of the Common Law afore the making of this Act. (2)

Wills made before this Statute.

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(2) The Doctrine established respecting this Statute is contained in the following Note, by Mr. Sugden, to Gilbert's Uses and Trusts, 128. [67]

"The Statute does not apply to a Case of *Death*, nor was it necessary that it should. The Act was passed before the Statute of Uses, and only related to Devises by Persons having other Persons seised to their Use, and in Words it only provided for Cases where Lands are willed to be sold, that is, where a Power is given; but it was held, since the Statute of Uses, to extend to an absolute Devise by a Person seised in Fee of the legal Estate to sell, as well as to a Power; Bonifant v. Greenfield, Cro. Eliz. 80. See Bro. Devise, pl. 3; and Hawkins v. Kemp, 3. East, 410. The Devise must be to the Persons as *Executors*; or at least the Fund, when raised, must be distributable by them in that Character.—A mere Devise to Persons to sell, and afterwards an Appointment of them as Executors, will not, it is said, bring the Case within the Act. It was not, however, necessary to decide the Point, because a Refusal by the other Executors was not shewn. Denne v. Judge, 11. East, 288; see Bonifant v. Greenfield, ubi sup. There is an Observation of Lord Kenyon's on the Preamble of the Act, in 6. Term Rep. 396. (See the preceding Note.) It must be remembered, that it only applies where one of the Executors *refuses* to join; and even where that is the Case, a cautious Purchaser will not accept a Conveyance from one, because the other may have previously sold to some other Person. Whether the Receipt of the acting Executor will be a good Discharge under the usual Power to give Receipts.—See Treat. of Purch. p. 387. s. 17."

And the following is the Result of Mr. Sugden's Examination of the Cases respecting Powers that do or do not survive. Treatise on Powers, Ch. 3. s. 2. pa. 140.

"1st. That where the Power is given to two or more, by their proper Names, who are not made Executors, it will not survive without express Words. 2d. That where it is given to three or more, generally, as, to *my Trustees, my Sons*, &c. and not by their proper Names, the Authority will survive whilst the plural Number remains. 3d. That, where the Authority is given to *Executors*, and the Will does not expressly point to a joint Exercise of it, even a single surviving Executor may execute it. But 4th. That where it is given to them *nominatim*, although in the Character of Executors, yet it is at least doubtful whether it will survive.

No. 12.

21 Henry VIII. c. 15.—Fermors shall enjoy their Leases against Recoveries by feigned Titles, &c.

21 H. VIII. c. 15.
13 Co. 6.
1 Roll. 443.
3 Bulst. 245. 248.

'WHERE afore this Time divers Persons have made Leases of their Manors, Lands, Tenements, and other Hereditaments, sometime by their Indentures, and sometime without Writings, to other Persons for Term of Years, taking of them great Fines for the Incomes of the same Leases; and after the same Leasors, their Heirs, or Assigns, have caused and suffered Recoveries to be had against them in the Court of our Sovereign Lord the King, and in other Lords Courts, upon feigned and untrue Titles, by Craft or Covin to put the same Termers from their said Terms; and after such Recoveries had, the same Recoverers, by Reason of such Recoveries and Judgments, have entered into the same Manors, Lands, Tenements, and other Hereditaments so to Ferm letten, and thereof have expulsed the said Fermers, contrary to their said Leases, Covenants, and Agreements; and because it was doubted to some Persons, whether the said Termers might falsify such Recoveries, or not:'

11 Co. 33.
2 Leon. 65.
Tenant for Term of Years may falsify a feigned Recovery had against him in the Reversion.
4 Ed. 1. stat. 1 c. 11.

II. Be it therefore enacted by the King our Sovereign Lord, by the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That all such Termers shall and may falsify for his Term only such Recoveries, as well heretofore had, as hereafter to be had, in such Wise and Form as a Tenant of a Freehold shall and may do by the Course of the Common Law, where such Tenant of Freehold was neither Privy nor Party to the same Recovery.

The Remedy of the Recoverors against Tenant for Years for Rent or Waste.

III. And that the same Termers, their Executors and Assigns, notwithstanding such Recoveries so had, shall retain, hold, and enjoy their said Terms, according to their said Leases against all such Recoverers, their Heirs, and Assigns, as they should or might have done against the said Lessors, if such Recovery had not been had nor suffered, and that the said Recoverers, their Heirs, and Assigns, after such Recovery so had, shall have like Remedy against the said Termers, their Executors, or Assigns, by Avowry or Action of Debt, for the Rents and Services reserved upon the same Leases, being due after the same Recoveries; and also like Actions against them for Waste done, after the same Recoveries so had; in like Manner and Form, as the said Leasors should or might have had, if the same Reoveries had never been had.

No Statute or Execution by Elegit shall be avoided by a feigned Recovery.
Co. Lit. 104. b.

IV. And also be it further enacted by the Authority aforesaid, That no Manner of Statute of the Staple, Statute Merchant, nor Execution by *Elegit*, be hereafter avoided, or in any wise made frustrate, by Means of any such feigned Recovery; but that all Persons having any Lands, Tenements, or other Hereditaments in Execution, or being intitled to have Execution of any Manors, Lands, or Tenements by any such Means, shall have by Force of this Statute like Remedy to avoid and falsify the same Recoveries, as before is ordained and provided for the Lease for Term of Years.

No. 13.

32 Henry VIII. c. 33.—An Act that wrongful Disseisin is no Descent in Law

'WHERE divers Persons of their insatiable Minds have heretofore by Strength, and without Title, entered into Manors, Lands, Tenements and other Hereditaments, and wrongfully disseised the rightful Owners and Possessors thereof, and so being seised by Disseisin, have thereof died seised, by Reason of which dying seised, the Disseisee, or such other Persons as before such Descent might have lawfully entered into the said Manors, Lands, and Tenements, were and be thereby clearly excluded of their Entry into the said Manors, Lands, and Tenements, and put to their Action for their Remedy and Recovery therein, to their great Costs and Charges;' for Reformation whereof, be it enacted by the Authority of this present Parliament, That the dying seised hereafter of any such Disseisor, of or in any Manors, Lands, Tenements, or other Hereditaments, having no Right or Title therein, shall not be taken or deemed from henceforth any such Descent in the Law, for to toll or take away the Entry of any such Person or Persons, or their Heirs, which at the Time of the same Descent had good and lawful Title of Entry into the said Manors, Lands, Tenements, or Hereditaments, except that such Disseisor hath had the peaceable Possession of such Manors, Lands, Tenements, or Hereditaments, whereof he shall so die seised, by the Space of five Years next after the Disseisin therein by him committed, without Entry or continual Claim by or of such Person or Persons as have lawful Title thereunto.

32 H. VIII. c. 33. 13 Co. 6. 1 Brown. 131. Vin. V. 9. 79.

Five Years Possession in the Disseisor before his Death. Dyer, f. 219. Co. Lit. 238, 256. a. Plowd. 47. Hob. 243. 4 Ann. c. 16.

No. 14.

32 Henry VIII. c. 34.—Concerning Grantees of Reversions to take Advantage of the Conditions to be performed by the Lessees.

'WHERE before this Time divers, as well Temporal as Ecclesiastical and Religious Persons, have made sundry Leases, Demises and Grants to divers other Persons, of sundry Manors, Lordships, Ferms, Meases, Lands, Tenements, Meadows, Pastures, or other Hereditaments, for Term of Life or Lives, or for Term of Years, by Writing under their Seal or Seals, containing certain Conditions, Covenants and Agreements to be performed, as well on the Part and Behalf of the said Lessees and Grantees, their Executors and Assigns, as on the Behalf of the said Lessors and Grantors, their Heirs and Successors; and forasmuch as by the Common Law of this Realm, no Stranger to any Covenant, Action, or Condition, shall take any Advantage or Benefit of the same, by any Means or Ways in the Law, but only such as be Parties or Privies thereunto, by the Reason whereof, as well all Grantees of Reversions, as also all Grantees and Patentees of the King our Sovereign Lord, of sundry Manors, Lordships, Granges, Ferms, Meases, Lands, Tenements, Meadows, Pastures, or other Hereditaments late belonging to Monasteries, and other Religious and Ecclesiastical Houses dissolved, suppressed, renounced, relinquished,

32 H. VIII. c. 34. 1 Roll 81, 359. 2 Roll 170. Cro. El. 457. Cro. Jac. 521. Godb. 161. pl. 227, 276. pl. 391. Vaugh. 39. Stile 326. 1 Mod. 192. 1 Show. 284, 285. 1 Salk. 185. 1 Vent. 10. 1 Sid. 401, 402. 2 Bulstr. 282.

No. 14:
32 H. VIII. c. 34.
Moor 93, pl. 230
— 94 pl. 232.
— 159 pl. 300.
— 242 pl. 380.
— 243 pl. 382.
— 525 pl. 691.
— 527 pl. 695.

'forfeited, given up, or by other Means come to the Hands and 'Possession of the King's Majesty since the fourth Day of *February*, 'the seven and twentieth Year of his most noble Reign, be excluded 'to have any Entry or Action against the said Lessees and Grantees, 'their Executors or Assigns, which the Lessors before that Time 'might by the Law have had against the same Lessees for the Breach 'of any Condition, Covenant or Agreement comprised in the Inden- 'tures of their said Leases, Demises and Grants:' Be it therefore enacted by the King our Sovereign Lord, the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by Authority of the same, That as well all and every Persons, and Bodies Politick, their Heirs, Successors and Assigns, which have or shall have any Gift or Grant of our said Sovereign Lord by his Letters Patents of any Lordships, Manors, Lands, Tenements, Rents, Parsonages, Tithes, Portions, or any other Hereditaments, or of any other Hereditaments, or of any Reversion or Reversions of the same, which did belong or appertain to any of the said Monasteries, and other Religious and Ecclesiastical Houses, dissolved, suppressed, relinquished, forfeited, or by any other Means come to the King's Hands, since the said fourth Day of *February* the seven and twentieth Year of his most noble Reign, or which at any Time heretofore did belong or appertain to any other Person or Persons, and after came to the Hands of our said Sovereign Lord, as also all other Persons being Grantees or Assignees to or by our said Sovereign Lord the King, or to or by any other Person or Persons than the King's Highness, and the Heirs, Executors, Successors and Assigns of every of them, shall and may have and enjoy like Advantages against the Lessees, their Executors, Administrators and Assigns, by Entry for Non-payment of the Rent, or for doing of Waste or other Forfeiture; and also shall and may have and enjoy all and every such like, and the same Advantage, Benefit and Remedies by Action only, for not performing of other Conditions, Covenants or Agreements contained and expressed in the Indentures of their said Leases, Demises or Grants, against all and every the said Lessees and Farmers and Grantees, their Executors, Administrators and Assigns, as the said Lessors or Grantors themselves, or their Heirs or Successors, ought, should, or might have had and enjoyed at any Time or Times, in like Manner and Form, as if the Reversion of such Lands, Tenements or Hereditaments had not come to the Hands of our said Sovereign Lord, his Heirs and Successors, should or might have had and enjoyed in certain Cases, by Virtue of the Act made at the first Session of this present Parliament, if no such Grant by Letters Patents had been made by his Highness.

Grantees of Reversions may take Advantage of Conditions and Covenants against the Lessees of the same Lands.
Moor 876. pl. 1228.
Goldsb. 175. pl. 109.
Plowd. f. 175.
Dyer, f. 68, 131, 309.
3 Co. 62.
5 Co. 112.
Bro. Entre congeable 139.
Cro. El. 600, 863.
Cro. Jac. 305.
Cro. Car. 24, 44, 137.

II. Moreover be it enacted by Authority aforesaid, That all Farmers, Lessees and Grantees of Lordships, Manors, Lands, Tenements, Rents, Parsonages, Tithes, Portions, or any other Hereditaments for Term of Years, Life or Lives, their Executors, Administrators and Assigns, shall and may have like Action, Advantage and Remedy against all and every Persons and Persons and Bodies Politick, their Heirs, Successors and Assigns which have or shall have any Gift or Grant of the King our Sovereign Lord, or of any other Person or Persons, of the Reversion of the same Manors, Lands, Tenements, and other Hereditaments so letten, or any Parcel thereof, for any Condition, Covenant or Agreement contained or expressed in the Indentures of their Lease and Leases, as the same Lessees, or any of them, might and should have had against the said Lessors and Grantors, their Heirs and Successors; all Benefits and Advantages of Recoveries in Value by Reason of any Warranty in Deed or in Law by Voucher or otherwise only excepted.

Lessees may have the like Remedy against the Grantees of the Reversions which they might have had against their Grantors.
Dyer, f. 257.
3 Co. 63.
5 Co. 16.

III. Provided always, That this Act, nor any Thing or Things therein contained, shall extend to hinder or charge any Person or Persons for the Breach of any Covenant or Condition comprised in any such Writing, as is aforesaid, but for such Covenants and Conditions as shall be broken or not performed, after the first Day of *September* next coming, and not before; any Thing before in this Act contained to the contrary thereof notwithstanding. (1)

No. 14.
32 H. VIII. c. 34.

Co. Lit. 215.

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(1) The following Exposition of this Act is given by Sir Edward Coke, 1 Inst. 215.

"Upon this Act divers Resolutions and Judgements have been given, which are necessary to be known.

1. That the said Statute is general, viz. That the Grantee of the Reversion of every common Person, as well as of the King, shall take Advantage of Conditions.

2. That the Statute doth extend to Grants made by the Successors of the King, albeit the King be only named in the Act.

3. That where the Statute speaketh of Lessees, that the same doth not extend to Gifts in Tail.

4. That where the Statute speaks of Grantees and Assignees of the Reversion, that an Assignee of Part of the State of Reversion may take Advantage of the Condition. As if Lessee for Life be, &c. and the Reversion is granted for Life, &c. So if Lessee for Years, &c. be, and the Reversion is granted for Years, the Grantee for Years shall take Benefit of the Condition in Respect of this Word *Executors* in the Act.

5. That a Grantee of Part of the Reversion shall not take Advantage of the Condition; as if the Lease be of three Acres, reserving a Rent upon Condition, and the Reversion is granted of two Acres, the Rent shall be apportioned by the Act of the Parties, but the Condition is destroyed, for that it is entire and against common Right.

6. That in the King's Case, the Condition in that Case is not destroyed, but remains still in the King.

7. By Act in Law a Condition may be apportioned in the Case of a common Person; as if a Lease for Years be made of two Acres, one of the Nature of Borough English, the other at the Common Law, and the Lessor having Issue two Sons, dieth, each of them shall enter for the Condition broken, and likewise a Condition shall be apportioned by the Act and Wrong of the Lessee, as hath been said in the Chapter of Rents.

8. If a Lease for Life be made, reserving a Rent upon Condition, &c. the Lessor levies a Fine of the Reversion, he is Grantee or Assignee of the Reversion; but without Attournment, he shall not take Advantage of the Condition, for the Makers of the Statute intended to have all necessary Incidents observed, otherwise it might be mischievous to the Lessee.*

* Attournment is taken away per 4 & 5 Anne, c. 16

9 There is a Diversity between a Condition that is compulsory, and a Power of Revocation that is voluntary; for a Man that hath a Power of Revocation, may by his own Act extinguish his Power of Revocation in Part, as by levying of a Fine of Part; and yet the Power shall remain for the Residue, because it is in the Nature of a Limitation, and not of a Condition; and so it was resolved in the Earl of Shrewsbury's Case in the Court of Wards. Pasch. 39. Eliz. and Mich. 40 and 41, Eliz.

10. If the Lessor bargain and sell the Reversion by Deed indented and inrolled, the Bargainee is not in the *per* by the Bargainor, and yet he is an Assignee within the Statute. So if the Lessor grants the Reversion in Fee to the Use of A and his Heirs, A is a sufficient Assignee within the Statute, because he comes in by the Act and Limitation of the Party, albeit he is in the *Post*, and the Words of the Statute be, *to* or *by*, and they be Assignees to him, although they be not by him; but such as come in merely by Act in Law, as the Lord of the Villiene, the Lord by Escheat, the Lord that entreth or claimeth by Mortmain, or the like, shall not take Benefit of this Statute.

11. If the Lessor in the Case before, bargain and sell the Reversion by Deed indented and inrolled, or if the Lessor make a Feoffment in Fee, and the Lessee re-enter, the Grantee or Feoffee shall not take any Advantage of any Condition without making Notice to the Lessee.

No. 14.
32 H. VIII. c. 34.

12. Albeit the whole Words of the Statute be for Non-payment of the Rent, or for doing of Waste or other Forfeiture, yet the Grantees or Assignees shall not take Benefit of every Forfeiture by Force of a Condition, but only of such Conditions as either are incident to the Reversion, as Rent, or for the Benefit of the State, as for not doing of Waste, for keeping the Houses in Reparations, for making of Fences, scouring of Ditches, for preserving of Woods, or such like, and not for the Payment of any Sum in Gross, delivery of Corn, Wood, or the Like so as other Forfeiture, shall be taken for other Forfeitures like to those Examples which were there put (viz.) of Payment of Rent, and not doing of Waste which are for the Benefit of the Reversion." And see Note ibid. in the late Editions of Co. Lit. from Lord Nottinghams's MSS.

The Statute only gives a Remedy for and against Persons who by Assignment become entitled to the Reversion—the Liability of the Assignee of the Term, and his Right to maintain an Action of Covenant against the Lessor and his Heirs, is at Common Law.

Such an Action can only be maintained against the Assignee of the entire legal Interest of the Whole or Part of the Premises demised—therefore it cannot be maintained against the Grantee of a Lessee for Lives for 99 Years, if the Lives should so long live in as full and ample a Manner as the Lessee held.—Earl of Derby v. Taylor, 1 East 502.

In Eaton v. Jacques, Doug. 454, it was held that a Mortgagee by Assignment of the whole leasehold Interest, who had not taken Possession, was not liable in Covenant, but this is very much questioned by Lord Kenyon, in Westerdell v. Dale, 7 Term Rep. 312, and Stone v. Evans, at N. P. cited 7 East 341. In Walker v. Reeves, Doug. 461, an Averment that the Assignee continued in Possession was holden insufficient as a Replication to a Plea that he had assigned it over to another; but that Case was decided by the same Judges, as Eaton and Jacques, and distinguished from it on the Ground of the latter being a Mortgage. Assignees under a Commission of Bankrupt, having taken the Property, as such are chargeable in Covenant, and having once accepted the Property, they cannot afterwards reject it. But the merely offering it to Sale is not such an Assumption of the Property as to charge them with the Covenants. Turner v. Richardson, 7 East 335, and Browne v. Robinson, there cited.

An Executor or Administrator upon whom a Term devolves, is answerable de bonis propriis, as an Assignee, Tilney v. Norris, 1 Salk. 309.

Covenant will lie against an Assignee of Part of the Estate, Cougham v. King, Cro. Car. 222. Stevenson v. Lambard, 2 East 575, and in such an Action there may be an Apportionment of Rent, although there cannot in the Case of the immediate Lessee.

It is settled that an Assignee can only be charged for Breaches incurred during his having the Estate in the Premises, and that such Liability is divested by an Assignment to a Beggar, or a Person leaving the Kingdom, or who does not take actual Possession, or to a Feme Covert whose Husband does not assent, or a Prisoner for Debt. Pitcher v. Tovey, 1 Salk. 81. Bamfather v. Jordan, Doug. 425. Lekeux v. Nash, 2 Str. 1221. Taylor v. Sturm, 1 Bos. and Pull. 21. And Notice of such Assignment is not necessary. Pitcher v. Tovey, ub. supra.

It is also settled that a Lessee continues liable notwithstanding any Assignment, and such Lessee cannot plead his Bankruptcy in Bar. Auriol v. Mills, 4 T. R. 94, except by Virtue of 49 Geo. III. c. 121. which releases the Bankrupt in Case the Assignees accept the Lease and the Benefit therefrom as a Part of the Estate.

It is agreed that the Statute relates only to Assignees of a Reversion expectant upon Leases for Life or Years, and not to the Assignees of Grantees in Fee or Tail;—and it is also evident that none of the Expressions in the Statute give a Right of Action to the second Assignee of a Term against the first Assignor. And the Recital of the Statute, that by the Common Law no Stranger to any Covenant shall take any Benefit or Advantage of the same, but only such as be Parties or Privies thereunto, with the Necessity for such an Enactment as constitutes the general Purview of the Statute, would seem to shew, that where there is no Reversion, the Assignee of a Purchaser of an Estate would have no Remedy on the Covenants of the original Grantor, for between such Grantor and the Assignee there does not appear to be any actual

But the Law seems to be, that such Assignee is entitled to the Benefit of Covenants for Title made with his Assignor or any under whom he claims. In Middlemore v. Goodall, Rol. Abr. 521 (6 Viner 392) Cro. Car. 503—505. Sir William Jones, 406, the Right to maintain such Action upon a Conveyance of the Inheritance at Common Law, is admitted by the Court as clear Law, and the Right of a Subassignee of a Term is also admitted both by the Court and Sir E. Coke as Counsel for the Defendant, in Andes v. Nokes Moor, 419, Cro. Eliz. 373—436, and although in both these Cases the Judgment was given for the Defendant on collateral Grounds, and there does not appear to be any Case in the Books in which Judgment was actually given for the Assignee in an Action upon such Covenants, I apprehend that the Right of maintaining such Action may be regarded as a settled Point. A Warranty extends to Assigns if named, but otherwise not. Co. Lit. 384—6. **No. 14.** 32 H. VIII. c. 34.

With Respect to Covenants for the Payment of a Rent Charge issuing out of Land, the principal Question in Brewster v. Kitchin, 1 Lord Raym. 317, was upon the Construction of a Covenant for the Payment of a Rent Charge without deducting Taxes, and the Application of such a Covenant to Taxes newly imposed, upon which Hol. C. J. delivered the Opinion of the Court in Favour of the Plaintiff;—"but then," says the Reporter, "he made another Question, which was not observed at the Bar nor by any other of the other Judges, viz. whether the Terre Tenant is liable to an Action upon this Covenant, and he was of Opinion that he was not. For by him, if Tenant in Fee grants a Rent Charge out of Lands and Covenants to pay it, without Deduction, for himself and his Heirs, you may maintain Covenant against the Grantor and his Heirs, but not against the Assignee, for it is a mere personal Covenant and cannot run with the Land; and for a Case in Point, he cited Hardres, 87 pl. 5. Cook and the Earl of Arundel."********* Therefore since it doth not appear that the Defendant is bound by this Covenant, for this Reason he was of Opinion, that Judgment ought to be given for the Defendant. But the other three Judges seemed to be a Surprise and not in Truth to comprehend this Objection, and therefore they persisted in their former Opinion, talking of Agreements, Intent of the Party, binding the Land, and I know not what. They gave Judgment for the Plaintiff against the Opinion of Holt Ch. J. for the Reason aforesaid.

Although in the preceding Case the Decision was in Favour of the Plaintiff, the Eminence not only of the dissentient Judge, but of the Reporter, who intimates his Opinion in such striking Terms, might probably afford sufficient Ground for considering the Question referred to as open to further Enquiry—but in Roach v. Wadham, 6 East 289, which involved the same Point, the Opinion of the Court was in Favour of the Defendant upon another Ground, and no Question was made as to the Liability of the Defendant supposing him to stand in the Character of Assignee. Mr. Sugden in his Treatise on Powers, p. 237, animadverts with much Particularity upon the Ground of the Decision, without touching upon the Point in Question, or rather taking it for granted;—but I should conceive that the mere negative Argument, of the Point not having engaged the Attention of the eminent Persons who decided that Case, cannot be regarded as decisive, if upon Examination a different Conclusion should be found more consonant to Law. And no Instance can better exemplify the Weakness of such a negative Argument in general, than that of Brewster v. Kitchin, in which the Point occurred only to the Chief Justice, whose Name is at least an indisputable Authority for its being a Question entitled to considerable Attention.

The Case above referred to by C. J. Holt, of Cook v. Earl of Arundel, Hardres 87, was a Suit in Equity to make the Defendant's Lands subject to a Fee-farm Rent, and to charge them with it, for that the Duke of Norfolk who had in his Hands both the Plaintiff's and Defendant's Lands subject to this Rent, had granted the Plaintiff's Lands to one under whom the Plaintiff claimed; and covenanted that they should be discharged from this Rent, upon which Covenant the Plaintiff sought Relief, and would have it taken to be a real Covenant which should run with the Land, and charge the other Lands with the whole Rent; but the Court was clear of Opinion, that it was no more than an ordinary and personal Covenant which must charge the Heir only in Respect of Assets and not otherwise.

In the Year Book, 42 Ed. 3.—3. a Case is cited and admitted, of an Action by an Assignee upon a Covenant by one Parcener upon a Partition to acquit

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32 H VIII c 34. the other of Suit—as a Covenant running with the Land—and the Case is cited as undisputed Law in Spencer's Case, 5 Co 18 1 Inst 385 There are also two Cases in the Year Books, 42 Ed 3—3 2 H 4—9 of Covenants by a Friar with the Consent of his Convent to find a Priest to officiate in the Chapel of the Covenantee, and the Intimations of the Court were, that such Covenant might run with the Land in Favour of the Alienee—neither of the Cases was actually decided, but the Doctrine is cited as good Law by Lord Coke in the Passages last referred to. It seems however to deserve Consideration, whether the Doctrine could be applied to the Case of an Individual entering into any Covenant in Respect of the Land of a Stranger with which he had no Concern, so as to maintain an Action on the Covenant by an Alienee of the Land

In Holmes v. Buckley, Prec Ch 39, 1 Eq. abr. 27, a Person granted a Watercourse, and covenanted to cleanse it, and afterwards, upon a Suit in Equity between the Alienees of the respective Parties, the Court held that it was a Covenant that run with the Land—and decided accordingly; but one ingredient in the Case was, that the Cleaning had been rendered more chargeable by a Building erected by the Defendant.

In the Mayor, &c of Carlisle, v Blamire, 8 East, 487, decided in Favour of the Defendant, upon a Grant which will presently be mentioned, it seems clearly taken for granted, that, upon the Ground of so much of a River running through certain Lands, as would be sufficient for supplying a Mill with Water, an Action might be maintained against the Alienee of the Land, upon a Covenant not to divert the Water.

In Conveyances of small Parcels of Land, it is very common to insert Covenants for building in a particular Manner, or for not exercising particular Trades. How far the Covenants are binding, except between the immediate Parties, seems very questionable There is no subsisting Privity in the Grantor, in Respect of Right or Interest in the Land to which after the Alienation he is merely a Stranger, still less is there any semblance of Privity between the Grantee and the Owner of any other Premises The Benefit of the Covenant is not assignable at Law as a Matter in Gross, neither does it appear to be a Right transmissable by Inheritance; and it may also be important to consider how far the Doctrine involved in the two last mentioned Cases, with Respect to charging Persons, to whom Land may come in a Course of Alienation, with Covenants entered into by preceding Owners, at any remote antecedent Period, can legally be carried.

To the Instances contained in the eighth Member of the preceding Extract from first Institutes, of a Bargainee or a Party taking under the Statute of Uses, because he comes in by the Act and Disposition of the Party, may be added, the Case of a Person who takes the Reversion by a common Recovery, and who, as the Law is laid down in the Case of Lincoln College, 3 Rep. 62, may take Advantage of the Statute, because he comes in by the Limitation and Act of the Party. In Mod 192, the Report was reflected upon by Sergeant Maynard, who said, there was no such Resolution in the Case of Lincoln College; but the Court said, that the Report, whether there were any Resolution in the Case or not, was founded on so good Reason, that Conveyances since had gone according to it. And in Glover v Cope, 3 Lev 326, it was resolved, that a Surrenderee of a Copyhold is within the Act, contrary to a preceding Resolution, in Brasier v Beal, Yelv 222, founded on the Ground of the Surrenderee being in by the Act of the Lord.

In all these Authorities it seems to be agreed, that if, in Substance, the Estate was transmitted by the Act and Disposition of the Party, he shall be considered as an Assignee and Grantee within the Statute, although, technically speaking, the Act of Conveyance might not be strictly a Grant or Assignment—or, in other Words, that the Right and Obligation of the Covenant followed the Transmission of the Estate, without Regard to the Mode or Character of the Conveyance, and I am not aware of any Authority in which the opposite Doctrine is directly stated—but, in the late Case of Roach and Wadham, which was argued very elaborately, upon the Question whether a Disposition operated as a Grant of the Estate, or the Execution of a Power, it was completely assumed, without Argument or Observation, that the Appointee, under a Power, was not subject to the Covenants of the Appointor—of course no Reference was made to the Statute, and the Case could not be brought within the immediate operation of it, being a Cov-

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veyance in Fee; but the several Authorities, which have been referred to, do not proceed upon any minute verbal Criticism on the Language of the Statute, but upon the broad general Principle of the Obligation following the Disposition of the Estate; and I should conceive, that the Case of a Bargainee would be regarded as completely analogous to that of an Appointee.

The Justice of the Case is very manifest, and it may be hoped, that, without any Disrespect towards those who were engaged in the Agitation of the Case referred to, a Point of such Importance would not be entirely laid at Rest, by a mere Reference to their implied Authority, without a more direct and ample Consideration of the immediate Question.

To the Cases mentioned by Sir Edward Coke, of a Lord taking an Estate by Escheat, who cannot have the Benefit of the Statute, may be added, Lord Thre'r v. Barton, Moore, 94—Chaworth v. Phillips, Moore, 876, in which it was held, that if a Lessee make an Underlease and surrender, he, in Reversion, cannot take the Benefit of the Condition, because he is in of another Estate PARAMOUNT;—and, in Webb v. Russell, 3 Term Rep. 393, it was held, that the Grant of the Reversion to the Lessee extinguished the Covenants of the Sublessee—but it is very material to advert to the Expressions in Moor, and that it is not merely that the Party was in of another Estate, but of another Estate *paramount*. The Point involves a Question respecting Leases made under Powers with Covenants to the Lessor—in Respect of which it is very evident, that the Party in Reversion or Remainder does not come in by any Act or Limitation of the Party making the Lease. The Point was mentioned, *arguendo*, in Webb v. Russell, and I have known it occur in Practice, upon a Case which went off upon other Grounds.

[Since writing the present Note, it was determined, in the Case of Isherwood v. Oldknow, Hil. 1815, B. R. (not yet reported) after very full Discussion at the Bar, that a Remainder man may maintain an Action of Covenant, upon the Covenant to the Tenant for Life, in a Lease made pursuant to a Power.]

With Respect to Conditions, at least, which are always construed strictly, it seems very difficult to maintain, that a Condition, that A, his Heirs or Assigns may re-enter, is to be taken Advantage of by a Party, who, by no possible Extension of Construction, can be regarded as standing in either of those Situations; and that it would be necessary, expressly to give the Benefit of the Condition to such other Persons to whom the Reversion might belong, in which Case, being ingrafted in the original Power of Leasing, it might not be subject to the Objection against a Condition being reserved to a Stranger. The Whole of the Subject last discussed seems very proper for the Attention of the Legislature, so as to Place the Matter perfectly upon the Footing which is required by the Justice and Equity of the Case. Probably, in most of the Cases, a Court of Equity would feel itself competent to apply the necessary Relief.

In Webb v. Russell, above referred to, the Lease was made by the Mortgagor and the Mortgagee of a Term. The Covenants were entered into with the Mortgagor, and it was held that no Action could be maintained upon them by the Assignees of the Mortgagee who had acquired the Reversion vested in the Mortgagor. The Discussion of the Case contains a great Body of important Learning upon the general Subject of this Note. In a subsequent Case, upon the same Covenant, it was held that the Action might be maintained in the Name of the original Covenantee (the Mortgagor) as being a Covenant in Gross, not affected by his Alienation. Stokes v. Russell, 3 T. R. 678, affirmed on Writ of Error, 1 H. Bl. 562.

The Decision in the Case of the Mayor, &c. of Carlisle v. Blamire, 8 East 487, already referred to, was, that an Action of Covenant could not be brought against a Person, as Assignee, in Respect of an Equity of Redemption, the legal Fee being vested in another Person as Assignee not in Possession.

The leading Authority with Respect to the Distinctions between Covenants that do or do not run with the Land (or in other Words, which an Heir or Assignee are subject to, or may take the Benefit of), is Spencer's Case, 5 Rep. 16 a, in which the following Rules are laid down:—1. When a Covenant extends to a Thing in Esse, at the Time of the Demise, the Thing to be done is in a Manner annexed and appurtenant to the Thing demised, and will bind the Assignee, although not named, as to repair the House demised. A

No. 14. Covenant to build a Wall upon the Land demised, will bind the Assignees if named; but a Covenant to do a collateral Thing, as to build a House on the Land of the Lessor will not.—3. A Covenant with Respect to personal Things demised with the Land, as a Flock of Sheep, will not bind the Assignee, although named.

32 H. VIII. c. 34.

It is also held in Spencer's Case, that a Husband taking a Term in Right of his Wife a Tenant, by Statute Merchant, or Statute Staple, or Elegit, or a Purchaser of a Term, under an Execution, shall have the Benefit of Covenants.

In Bally v. Wells, 3 Wils. 25, it was ruled, that a Covenant, by a Lessee of Tithes, not to accept a Composition, binds the Assignee, he being named. See also the full and elaborate Judgment of Lord Ch. J. Wilmot upon this Case in his own Reports, p. 348. A Covenant that the Lessee his Executors and Administrators will reside upon the Premises, is binding upon the Assignee, although not named. Tatem v. Chaplin, 2 H. Bl. 133.

A Covenant to erect a Mill, and not to have any Persons to work there who are not settled in the Parish, is personal, and does not bind the Assignee. Mayor, &c. of Congleton v. Pattison, 10 East 130. Upon Covenant by the Lessee to plant Trees on Land, and by the Lessor for himself, his Heirs, Executors, and Administrators, to pay for them at a fair Valuation, by two Persons named, the Assignee of the Lessor, not being named, is not bound. Gray v. Cuthbertson. Selwyn N. P. 2 Ed. 445.

As to whether an Assignee of the Reversion can take Advantage of a Covenant not to assign. See Lomas v. How, Sir T. Raym. 250.

In Thursby v. Plant, 1 Saunders 237, it was held that the Statute transferred the Privity of Contract from the Lessor to his Assignee, and that, consequently, an Action by or against such an Assignee, is transitory as well as one between the Lessor and Lessee; but any Action by or against the Assignee of the Lessee is local, and can only be brought in the County where the Land demised is situate, being in Respect merely of Privity of Estate. See Stevenson v. Lambard, 2 East 575. Barker v. Damer, Carth. 182. Salk. 80. but a Declaration laying the Venue in another County is cured by Verdict, Mayor of London v. Cole, 7 T. R. 583. In Covenant *against* an Assignee, it is sufficient to state that the Premises came to Defendant by Assignment, and it is not any Variance if it should appear that he took them as Heir. Derisley v. Custance, 4 T. R. 75. but a Party *suing* as Assignee must specifically set forth his Title. It may deserve Consideration, whether it might not be desirable to allow such an Assignee to state his Title generally in Covenant, as may be done by Statute in an Avowry for Rent.

If a Tenant in Tail make a Lease, not warranted by Statute, and *after his Death* the Lessee assign, the Assignee cannot maintain an Action on the Covenant for quiet Enjoyment, the Estate to which the Covenant was annexed having determined before his Interest commenced, and the Right by Estoppel not extending to such a Case. Andrew v. Pearce, 1 Bos. and P. N. R. 158.

No. 15.

12 Charles II. c. 24.—An Act for taking away the Court of Wards and Liveries, and Tenures *in Capite*, and by Knights-Service, and Purveyance, and for settling a Revenue upon his Majesty in lieu thereof.

12 Car. II. c. 24. The Reasons of this Act.

'WHEREAS it hath been found by former Experience, That the Courts of Wards and Liveries, and Tenures by Knights-Service, either of the King or others, or by Knights-Service *in Capite*, or Socage *in Capite* of the King, and the Consequents upon the same, have been much more burthensome, grievous, and prejudicial to the Kingdom, than they have been beneficial to the King: And whereas since the Intermission of the said Court, which hath been from the Four and Twentieth Day of *February* which

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'was in the Year of our Lord One Thousand Six Hundred Forty 'and Five, many Persons have by Will and otherwise made Disposal 'of their Lands held by Knights-Service, whereupon divers Questions 'might possibly arise, unless some seasonable Remedy be taken to 'prevent the same;' Be it therefore enacted by the King our Sovereign Lord, with the Assent of the Lords and Commons in Parliament assembled, and by the Authority of the same, and it is hereby enacted, That the Court of Wards and Liveries, and all Wardships, Liveries, Primer Seisins and Ousterlemains, Values and Forfeitures of Marriages, by Reason of any Tenure of the King's Majesty, or of any other by Knights-Service, and all mean Rates, and all other Gifts, Grants, Charges incident or arising, for or by Reason of Wardships, Liveries, Primer Seisins or Ousterlemains, be taken away and discharged, and are hereby enacted to be taken away and discharged, from the said Twenty-fourth Day of *February* One Thousand Six Hundred Forty-five; any Law, Statute, Custom or Usage to the contrary hereof in any wise notwithstanding: And that all Fines for Alienations, Seizures and Pardons for Alienations, Tenure by Homage, and all Charges incident or arising, for or by Reason of Wardship, Livery, Primer Seisin or Ousterlemain, or Tenure by Knights-Service, Escuage, and also *Aid pur file marrier*, and *Pur fair fitz Chivalier*, all other Charges incident thereunto, be likewise taken away and discharged, from the said Twenty-fourth Day of *February*, One Thousand Six Hundred Forty and Five: any Law, Statute, Custom or Usage to the contrary hereof in any wise notwithstanding: And that all Tenures by Knights-Service of the King, or of any other Person, and by Knights-Service *in Capite*, and by Socage *in Capite* of the King, and the Fruits and Consequents thereof, happened or which shall or may hereafter happen or arise thereupon or thereby, be taken away and discharged; any Law, Statute, Custom or Usage to the contrary hereof in any wise notwithstanding; and all Tenures of any Honours, Manors, Lands, Tenements or Hereditaments, or any Estate of any Inheritance at the Common Law, held either of the King, or of any other Person or Persons, Bodies Politick or Corporate, are hereby enacted to be turned into free and common Socage, to all Intents and Purposes, from the said Twenty-fourth Day of *February* One Thousand Six Hundred Forty-five, and shall be so construed, adjudged and deemed to be from the said Twenty-fourth Day of *February* One Thousand Six Hundred Forty-five, and for ever thereafter, turned into free and common Socage; any Law, Statute, Custom or Usage to the contrary hereof in any wise notwithstanding;

The Court of Wards and Liveries, Primer Seisins, &c. taken away.

Fines for Alienations, &c. taken away.

Tenures by Knights Service taken away. Mad Hist. Exc. 432, 433.

II. And that the same shall for ever hereafter stand and be discharged of all Tenure by Homage, Escuage, Voyages Royal and Charges for the same, Wardships incident to Tenure by Knights-Service, and Values and Forfeitures of Marriage, and all other Charges incident to Tenure by Knights-Service, and of and from *Aide pur file marrier*, and *Aide pur fair fitz Chivalier*; any Law, Statute, Usage or Custom to the contrary in any wise notwithstanding: And that all Conveyances and Devises of any Manors, Lands, Tenements and Hereditaments made since the said Twenty-fourth Day of *February*, shall be expounded to be of such Effect, as if the same Manors, Lands, Tenements and Hereditaments had been then held and continued to be holden in free and common Socage only; any Law, Statute, Custom or Usage to the contrary hereof in any wise notwithstanding.

Tenures by Homage, Escuage, &c. discharged.

III. And be it further ordained and enacted by the Authority of this present Parliament, That One Act made in the Reign of King Henry the Eighth, intituled, *An Act for the Establishment of the Court of the King's Wards*; and also One Act of Parliament made in

32 H. VIII. c. 46. and 33 H. VIII. c. 22, repealed.

No. 14. 12 Car. II. c. 24

the Thirty-third Year of the Reign of the said King Henry the Eighth, concerning the Officers of the Courts of Wards and Liveries, and every Clause, Article and Matter in the said Acts contained, shall from henceforth be repealed and utterly void.

All Tenures to be created by the King hereafter shall be free and common Socage. Dyer 44. pl. 28.

IV. And be it further enacted by the Authority aforesaid, That all Tenures hereafter to be created by the King's Majesty, his Heirs or Successors, upon any Gifts or Grants of any Manors, Lands, Tenements or Hereditaments, of any Estate of Inheritance at the Common Law, shall be in free and common Socage, and shall be adjudged to be in free and common Socage only, and not by Knights-Service, or *in Capite*, and shall be discharged of all Wardship, Value and Forfeiture of Marriage, Livery, Primer Seisin, *Ousterlemain, Aide pur fair fitz Chivalier* and *pur file marrier*; any Law, Statute, or Reservation to the contrary thereof in any wise notwithstanding.

Proviso for Rents certain, Heriots, &c.

V. Provided nevertheless, and be it enacted, That this Act, or any Thing herein contained, shall not take away, nor be construed to take away, any Rents certain, Heriots or Suits of Court belonging or incident to any former Tenure now taken away or altered by Virtue of this Act, or other Services incident or belonging to Tenure in common Socage, due or to grow due to the King's Majesty, or mean Lords, or other private Person, or the Fealty and Distresses incident thereunto; and that such Relief shall be paid in Respect of such Rents as in is paid in Case of a Death of a Tenant Socage.

Fines for Alienations.

VI. Provided always, and be it enacted, That any Thing herein contained shall not take away, nor be construed to take away, any Fines for Alienation due by particular Customs of particular Manors and Places, other than Fines for Alienations of Lands or Tenements holden immediately of the King *in Capite*.

Tenures in Frank Almoign.

VII. Provided also, and be it further enacted, That this Act, or any Thing therein contained, shall not take away, or be construed to take away, Tenures in *Frank-Almoign*, or to subject them to any greater or other Services than they now are; nor to alter or change any Tenure by Copy of Court-Roll, or any Services incident thereunto; nor to take away the honorary Services of Grand Serjeanty, other than of Wardship, Marriage, and Value of Forfeiture of Marriage, Escuage, Voyages Royal, and other Charges incident to Tenure by Knights Service; and other than *Aide pur faier fitz Chivalier*, and *Aide pur file marrier*.

Copy of Court Roll.

Honorary Services.

Parents may dispose of the Custody of Children during their Minority. Vaughan 177, 3 Mod. 24

VIII. And be it further enacted by the Authority aforesaid, That where any Person hath or shall have any Child or Children (1) under the Age of One and twenty Years, and not married at the Time of his Death, that it shall and may be lawful to and for the Father of such Child or Children, whether born at the Time of the Decease of the Father, or at that Time in *ventre sa mere*, or whether such Father be within the Age of One and twenty Years, or of full Age, by Deed executed in his Life-time, or by his last Will and Testament in Writing, in the Presence of Two or more credible Witnesses, (2) in such Manner, and from Time to Time as he shall respectively think fit, to dispose of the Custody and Tuition of such Child or Children, for and during such Time as he or they shall respectively remain under the Age of One and twenty Years, or any lesser Time, to any Person or Persons (3) in Possession or Remainder, other than Popish Recusants;

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(1) The Act does not extend to illegitimate Children.—See Croke's Report of Horner v. Liddiard. See also Priestly v. Hughes, 11 East. 1.

(2) A mere Revocation of an Appointment of Guardian by Will may be by Writing, unattested—but a Writing, purporting to appoint a new Guardian, and void for that Purpose for Want of Attestation, does not operate as a Revocation.—Exparte Earl of Ilchester, 7 Vesey, 348.

(3) Guardianship to two survives.—Eyre v. Countess of Shaftesbury, 2 P. Wms. 103.

and that such Disposition of the Custody of such Child or Children, made since the Twenty-fourth of *February*, One Thousand Six Hundred and Forty-five, or hereafter to be made, shall be good and effectual against all and every Person or Persons claiming the Custody or Tuition of such Child or Children as Guardian in Socage or otherwise: And that such Person or Persons, to whom the Custody of such Child or Children hath been or shall be so disposed or devised as aforesaid, shall and may maintain an Action of Ravishment of Ward or Trespass, against any Persons which shall wrongfully take away or detain such Child or Children, for the Recovery of such Child or Children; and shall and may recover Damages for the same in the said Action, for the Use and Benefit of such Child or Children. (4)

No. 15. 12 Car. II. c. 24.

Actions of Ravishment of Wards.

IX. And be it further enacted, That such Person or Persons to whom the Custody of such Child or Children hath been or shall be so disposed or devised, shall and may take into his or their Custody to the Use of such Child or Children, the Profits of all Lands, Tenements, and Hereditaments, of such Child or Children; and also the Custody, Tuition, and Management, of the Goods, Chattels, and Personal Estate of such Child or Children, till their respective Age of One and twenty Years, or any lesser Time, according to such Disposition aforesaid, and may bring such Action or Actions in relation thereunto, as by Law a Guardian in common Socage might do. (5)

The Lands of Children and the Management of their Personal Estate by their Guardians.

X. Provided also, That this Act, or any Thing therein contained, shall not extend to alter or prejudice the Custom of the City of *London*, nor of any other City or Town Corporate, or of the Town of *Berwick upon Tweed*, concerning Orphans; nor to discharge any Apprentice from his Apprenticeship.

XI. Provided also, That neither this Act, nor any Thing therein contained, shall infringe or hurt any Title of Honour, Feodal or other, by which any Person hath or may have Right to sit in the Lords House of Parliament, as to his or their Title of Honour, or sitting in Parliament, and the Privilege belonging to them as Peers; this Act, or any Thing therein contained to the contrary in anywise notwithstanding.

Honour Feodal

'XII. And whereas by like Experience it hath been found, That 'though divers good, strict, and wholesome Laws have been made in 'the Times of sundry his Majesty's most noble Progenitors, some ex'tending so far as to Life, for Redress of the Grievances and Oppres'sions committed by the Persons employed for making Provisions for 'the King's Household, Carriages, and other Purveyance for his 'Majesty and his Occasions; yet divers Oppressions have been still 'continued, and several Counties have submitted themselves to sundry 'Rates and Taxes, and Compositions, to redeem themselves from such 'Vexations and Oppressions: And forasmuch as the Lords and Com'mons assembled in Parliament do find that the said Remedies are not 'fully effectual, and that no other Remedy will be so effectual and 'just, as to take away the Occasion thereof, especially if Satisfaction 'and Recompence shall be therefore made to his Majesty, his Heirs 'and Successors, which is hereby provided to his Majesty's Good'liking and Content;' his Majesty is therefore graciously pleased, That it may be enacted; and be it enacted by the King's most Excel-

Purveyances taken away.

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(4) The customary Right of a Lord, in Respect of Copyholds, is not taken away by this Statute.—Clinch v. Cudmore, Lutw. 1187. 3 Lev. 395. Comb. 253.

(5) See Statute of Marlebridge, 52 Hen. III. c. 17, ante No. 4, as to the Authority and Duty of Guardians in Socage, and Notes. A Lease by a testamentary Guardian is absolutely void.—Roe v. Hodgson, 2 Wils. 135, as to the Functions of such Guardian. See D. of Beaufort v. Berty, 1 P. Wms. 705, and Eyre v. Countess of Shaftesbury, 2 P. Wms. 103. 1 Forblanque's Notes to Treobus of Equity, 251, 252.

No. 13.
12 Car. II. c. 24.

lent Majesty, by and with the Advice and Consent of the Lords and Commons in this present Parliament assembled, That from henceforth no Sum or Sums of Money, or other Thing, shall be taken, raised, taxed, rated, imposed, paid, or levied, for or in regard of any Provision, Carriages, or Purveyance for his Majesty, his Heirs or Successors.

Purveyances for the King, Queen, &c.

Timber, Carts, Carriages, &c. taken away

Altered by 13 Car. II stat. 1, c. 8, sec. 2. 13 & 14 Car. II. c. 20, sec. 1, and 1 Jac. 2, c. 10.

XIII. And that henceforth no Person or Persons by any Warrant, Commission, or Authority, under the Great Seal or otherwise, by colour of buying or making Provision or Purveyance for his Majesty or any Queen of *England* for the Time being, or of any the Children of any King or Queen of *England* for the Time being, or that shall be, or for his, their, or any of their Houshold, shall take any Timber, Fuel, Cattle, Corn, Grain, Malt, Hay, Straw, Victual, Cart, Carriage, or other Thing whatsoever, of any the Subjects of his Majesty, his Heirs or Successors, without the free and full Consent of the Owner or Owners thereof had and obtained without Menace or Inforcement; nor shall summon, warn, take, use or require any of the said Subjects, to furnish or find any Horses, Oxen, or other Cattle, Carts, Ploughs, Wains, or other Carriages, for the Use of his Majesty, his Heirs or Successors, or of any Queen of *England*, or of any Child or Children of any the Kings or Queens of *England* for the Time being, for the carrying the Goods of his Majesty, his Heirs or Successors, or the said Queens, or Children, or any of them, without such full and free Consent as aforesaid; any Law, Statute, Custom, or Usage to the contrary notwithstanding.

No Pre-emption, &c.

XIV. And be it further enacted, That no Pre-emption shall be allowed or claimed in the Behalf of his Majesty, or any of his Heirs or Successors, or of any the Queens of *England*, or of any the Children of the Royal Family for the Time being, in Market or out of Market; but that it be for ever hereafter free to all and every of the Subjects of his Majesty, to sell, dispose, or employ, his said Goods to any other Person or Persons as himself listeth, any Pretence of making Provision or Purveyance of Victual, Carriages, or other Thing for his Majesty, his Heirs and Successors, or of the said Queens or Children, or any Pretence of Pre-emption in their, or any of their Behalfs, notwithstanding: And if any Person or Persons shall make Provision or

The Penalty.

Purveyance for his Majesty, his Heirs or Successors, or any the Queens or Children aforesaid, or impress or take any such Carriages or other Things aforesaid, on any Presence or Colour of any Warrant aforesaid, under the Great Seal or otherwise, contrary to the Intent hereof, it shall be lawful for the Justices of Peace, or such Two or One of them as dwell near, and to the Constables of such Parish or Village where such Occasion shall happen, at the Request of the Party grieved, and they are hereby enjoined, to commit, or cause to be committed, the Party or Parties so doing and offending to Gaol, till the next Sessions, there to be indicted and proceeded against for the same; and that the Officers and Inhabitants of the Village or Parish where such Offence shall happen, shall be assistant therein; and moreover, the Party grieved shall have his Action or Actions against such Offender or Offenders, and therein recover his Treble Damages and

No Action upon this Statute to be stayed, but by Order of the Court where such Action depends.

Treble Costs: In which Action, no Essoin, Wager of Law, Aid-prayer, Privilege, Protection, Imparlance, Injunction, or Order of Restraint shall be granted or allowed: And if any Person or Persons shall (after Notice given that the Action depending is grounded upon this Statute) cause or procure any Action at the Common Law, grounded on this Statute, to be delayed or stayed before Judgement, by Colour or Means of any Order, Power, Warrant or Authority, save only of the Court where such Action shall be brought and depending, or after Judgement had upon such Action, shall cause or

procure Execution of such Judgement to be stayed or delayed by Colour or Means of any Order, Warrant, Power or Authority, save only by Writ of Error or Attaint, or Order of such Court where such Writ of Error or Attaint shall be depending; That then the Person so offending shall incur the Pains, Penalties, and Forfeitures, ordained and provided by the Statute of Provision and *Præmunire* made in the Sixteenth Year of the Reign of King RICHARD the Second: Provided always, That this Act extend not to prejudice any of his Majesty's Rights, Titles or Duties of, in or to, or out of any Tin in the Stannaries of *Devon* and *Cornwall*, nor to prejudice the ancient Duties of Butlerage and Prizage of Wines; but that the same shall be in the same Plight that the same were before the making of this Act; any Thing herein contained to the contrary in any wise notwithstanding. And now to the Intent and Purpose that his Majesty, his Heirs and Successors, may receive a full and ample Recompence and Satisfaction, as well for the Profits of the said Court of Wards, and the Tenures, Wardships, Liveries, Primer Seisins, *Ouster le mains*, and other the Premisses and Perquisites incident thereunto; and for all Arrears any way due for the same, as also for all and all Manner of Purveyance and Provisions herein before mentioned, and intended to be taken away and abolished; and all Sums of Money due or pretended to be due or payable for and in Respect of any Compositions for the same.

No. 15. 12 Car. II. c. 24.

Præmunire, 16 R. II. c. 5.

Proviso for the Stanneries, Butlerage, Prizage, Recompence to his Majesty for the Court of Wards and Purveyances.

XV. Be it therefore enacted by the Authority aforesaid, That there shall be paid unto the King's Majesty, his Heirs and Successors for ever hereafter, in Recompence as aforesaid, the several Rates, Impositions, Duties and Charges herein-after expressed, and in Manner and form following:

[The Remainder of the Act relates to the Duties of Excise.]

No. 16.

19 Charles II. c. 6.—An Act for Redress of Inconveniencies by Want of Proof of the Deceases of Persons beyond the Seas or absenting themselves, upon whose Lives Estates do depend.

19 Car. II. c. 6

Proof. 6 Annæ, c. 18.

'WHEREAS divers Lords of Manors and others have used to 'grant Estates by Copy of Court Roll for One, Two, or more 'Life or Lives, according to the Custom of their several Manors; 'and have also granted Estates by Lease for one or more Life or Lives, 'or else for Years determinable upon one or more Life or Lives; and 'it hath often happened, that such Person or Persons for whose Life 'or Lives such Estates have been granted, have gone beyond the Seas, 'or so absented themselves for many Years, that the Lessors and Re'versioners cannot find out whether such Person or Persons be alive 'or dead, by Reason whereof such Lessors and Reversioners have 'been held out of Possession of their Tenements for many Years, after 'all the Lives upon which such Estates depended are dead, in Regard 'that the Lessors and Reversioners, when they have brought Actions 'for the Recovery of their Tenements, have been put upon it to prove 'the Death of their Tenants, when it is almost impossible for them 'to discover the same:'

II. For Remedy of which Mischief, so frequently happening to such Lessors or Reversioners, be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That if such Person or Persons, for whose Life or Lives such Estates have been or shall be

Persons beyond the Seas, or absenting themselves for Seven Years. Carthew 246.

No. 16
12 Car. II. c. 6.

granted as aforesaid, shall remain beyond the Seas, or elsewhere absent themselves in this Realm, by the Space of Seven Years together, and no sufficient and evident Proof be made of the Lives of such Person or Persons respectively, in any Action commenced for Recovery of such Tenements by the Lessors or Reversioners; in every such Case the Person or Persons upon whose Life or Lives such Estate depended, shall be accounted as naturally dead, and in every Action brought for the Recovery of the said Tenements by the Lessors or Reversioners, their Heirs or Assigns, the Judges before whom such Action shall be brought, shall direct the Jury to give their Verdict as if the Person so remaining beyond the Seas, or otherwise absenting himself, were dead

What shall be a good Challenge to Jurors upon Trial of Lives in Being.

III And be it further enacted, That in any such Action wherein the Life or Death of any such Person or Persons shall come in question between the Lessor or Reversioner and Tenant in Possession, it shall and may be lawful for the Lessor or Reversioner to take Exception to any of the Jurors returned for the Trial of that Cause, that the greatest Part of the Real Estate of any of such Jurors is held by Lease or Copy for Lives, who upon Proof thereof shall be set aside as in Case of other legal Challenges.

Proviso for Lands held by Lives of certain Traitors attainted.

IV. Provided always, and be it enacted by the Authority aforesaid, That nothing in this Act contained shall extend to any Lands held by the Life or Lives of any Person or Persons attainted of Treason for the horrid Murder of his late Majesty, of blessed Memory, who now conceal or hide themselves, which Lands are or have been vested in his Majesty, and are now granted to his Royal Highness the Duke of *York*, but that the Course of Evidence heretofore used in such Cases shall be had and used, any Thing to the contrary in this Act notwithstanding

Proviso for Persons evicted by this Act the Persons not being dead.

V. Provided always, and be it enacted, That if any Person or Persons shall be evicted out of any Lands or Tenements by Virtue of this Act, and afterwards if such Person or Persons upon whose Life or Lives such Estate or Estates depend, shall return again from beyond Seas, or shall on Proof in any Action to be brought for Recovery of the same, be made appear to be living, or to have been living at the Time of the Eviction, that then and from thenceforth the Tenant or Lessee, who was outed of the same, his or their Executors, Administrators or Assigns, shall or may re-enter, re-possess, have, hold, and enjoy the said Lands or Tenements in his or their former Estate, for and during the Life or Lives, or so long Term as the said Person or Persons upon whose Life or Lives the said Estate or Estates depend, shall be living; and also shall upon Action or Actions to be brought by him or them against the Lessors, Reversioners, or Tenants in Possession, or other Persons respectively, which since the Time of the said Eviction received the Profits of the said Lands or Tenements, recover for Damages the full Profits of the said Lands or Tenements respectively, with lawful Interest for and from the Time that he or they were outed of the same Lands or Tenements, and kept and held out of the same by the said Lessors, Reversioners, Tenants, or other Persons, who after the said Eviction received the Profits of the said Lands or Tenements, or any of them respectively, as well in the Case when the said Person or Persons upon whose Life or Lives such Estate or Estates did depend, are or shall be dead at the Time of bringing of the said Action or Actions, as if the said Person or Persons were then living.

(See 6 Ann c 18, which extends to Reversioners after the Death of Minors or married Women, &c.

No. 17.

29 Charles II. c. 3.—An Act for Prevention of Frauds and Perjuries.*

'FOR Prevention of many fraudulent Practices, which are commonly endeavoured to be upheld by Perjury and Subordination of Perjury;' be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the Four and Twentieth Day of *June*, which shall be in the Year of our Lord One Thousand Six Hundred Seventy and Seven, all Leases, Estates, Interests of Freehold, or Terms of Years, or any uncertain Interest of, in, to or out of any Messuages, Manors, Lands, Tenements or Hereditaments, made or created by Livery and Seisin only, or by

29 Car. II. c. 3.
1 Roll. Abr. 24.
2 Lev 227.
Parol Leases and Interest of Freehold shall have the Force of Estates at Will only.

* The Statute of Frauds embraces a great Variety of Subjects that have no Connection with each other, and many of which are in no Degree affected by the common Object referred to in the Title and Preamble. There is no Act, in the Statute Book, to which, from the Nature of its Contents, it would be more difficult to assign an appropriate Place in a Collection like the present; and the Statute is introduced in this Place, in conformity with a Principle which has, in a great Measure, been suggested by its own very miscellaneous Provisions, of inserting Acts which embrace a Variety of Provisions, applicable to different Parts of the general Division, under a common Title, in the first Class to which any one of the Subjects so included may relate.

The Statute, although far from having met with universal Approbation, has certainly received its full Share of Panygeric; and the Language of Extravagance has even gone so far as to declare, that every Line of it deserved a Subsidy. The framing of it has been ascribed to Sir Matthew Hale; but, apparently, without any sufficient Foundation.

The two leading Provisions, which require that the Disposition of Lands, and certain personal Contracts, shall be evidenced by Writing, signed by the Party conveying or contracting, and that Wills of Land shall be attested by Witnesses, are very useful and expedient—but are not distinguished by any great Novelty of Principle.

The Language and Composition of the Act have, certainly, no Claim to particular Commendation; and it is truly observed by Lord Mansfield, with Respect to the Clause concerning the Attestation of Wills, "that the whole Clause, which introduces a positive Solemnity to be observed, not by the learned only, but by the unlearned, at a Time when they are supposed to be without legal Advice, in a Matter which greatly interests every Proprietor of Land, when the Direction should be plain to the meanest Capacity, is so loose, that there is not a single Branch of the Solemnity defined or described with sufficient Certainty, to convey the same Idea to the greatest Capacity."—Wyndham v. Chetwynd, 1 Bur. 418. It is certainly an Act which, next to those relating to the Settlement of the Poor, has been productive of greater Litigation, in settling its Construction, than any in the whole Range of the Statutes, although the Annuity Act may be placed in Competition with it in that Respect, when considered with Reference to the very limited Nature of the Subject to which it applies. It was stated by Mr. Barrington, forty Years ago, to be a common Notion in Westminster Hall, that it had not been explained at a less Expence than £100,000. But the Laxity, which has sometimes prevailed in the Construction of it, may share, with any Imperfection of its own, a considerable Proportion of the Imputation of that Expence—a Laxity which the Opinions recently expressed, concerning its Operation, have very generally condemned; and there can be no doubt, that the permitting the Exposition of an Act to be influenced by any Opinions respecting its Policy or Utility, is not less repugnant to general Convenience, than to the Maintenance of a due Subordination of judicial Interpretation to legislative Authority.

No. 17.
26 Car. II. c. 3.

Parol, and not put in Writing, and signed by the Parties so making or creating the same, or their Agents thereunto lawfully authorized by Writing, shall have the Force and Effect of Leases or Estates at Will (1) only, and shall not either in Law or Equity be deemed or taken to have any other or greater Force or Effect; any Consideration for making any such Parol Leases or Estates, or any former Law or Usages, to the contrary notwithstanding.

Except Leases not exceeding Three Years, &c.

II. Except nevertheless all Leases not exceeding the Term of Three Years from the making thereof, (2) whereupon the Rent reserved to the Landlord, during such Term, shall amount unto Two third Parts at the least of the full improved Value of the Thing demised.

No Leases or Estates of Freehold shall be granted or surrendered by Word.

III. And moreover, That no Leases, Estates or Interests, either of Freehold, or Terms of Years, (3) or any uncertain Interest, not being Copyhold or Customary Interest, of, in, to or out of any Messuages, Manors, Lands, Tenements or Hereditaments, shall at any Time after the said Four and Twentieth Day of *June* be assigned, granted or surrendered, unless it be by Deed, or Note (4) in Writing, signed by the Party so assigning, granting or surrendering the same, or their Agents thereunto lawfully authorized by Writing, or by Act and Operation of Law.

Promises & Agreements by Parol.
2 Shower 16.
Skinn. 142, 143.
2 Mod. 310.
1 Vent. 361, 362.
3 Lev. 65, 66.
1 Salk. 280.
See 3 Bur. 1281, 1886, 1921.

IV. And be it further enacted by the Authority aforesaid, That from and after the said Four and Twentieth Day of *June*, no Action shall be brought whereby to charge any Executor or Administrator upon any special Promise, to answer Damages out of his own Estate: or whereby to charge the Defendant upon any special Promise to answer for the Debt, Default or Miscarriages of another Person; (5)

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(1) In Case the Holding is at a yearly Rent, it is construed to be a Tenancy from Year to Year, and not a strict Tenancy at Will, and there must be proper Notice to quit. Clayton v. Blakey, 8 T. R. 3. The Tenancy in all Respects, except the Duration of the Term, is regulated by the Parol Agreement. Doe dem. Rigge v. Bell, 5 T. R. 471. See some Observations as to Cases where Tenancy at Will may still subsist. Watkin's Elements of Conveyancing, 4. See also Harg. Notes to Co. Litt 55. (a). In Richardson v Langridge, 4 Taunt. 128, it was held, that a Letting without Reference to Time, creates a strict Tenancy at Will.

(2) A Lease by Parol for three Years to commence in future, is not good. Rawlins v. Turner, 1 Lord Raym. 736.

(3) Ruled at Nisi Prius, that the Statute extends to a Parol Assignment of a Tenancy from Year to Year, Botting v. Martin, 1 Camp. 318, to a Surrender of such a Tenancy. Mollett v. Brayne, 2 Campb. 103.

(4) A Cancelling is not a Surrender within the Act. Roe v. Archb. of York, 6 East 86. But a Surrender of a Lease for Years may be made without Deed, as where a Mortgagee wrote on the Mortgage Deed "Received of A. B. for Principal and Interest, and I do release and discharge the within Premises from the Term of Five Hundred Years." This was holden to be a sufficient Surrender, Farmer v. Rogers, 2 Wils. 26.

(5) This Clause extends to a Promise that a third Person hiring a Horse shall return it. Buckmyr v. Darnall, 2 Lord Raym. 1085. Salk. 27. a Promise to pay the Debt of A. B. in Case the Plaintiff would not sue for it. Rothey v. Curry, B. N. P. 281, to pay *a Debt* in Case the Plaintiff would stay his Action. Fish v. Hutchinson, 2 Wils. 94. A Promise before Delivery to pay, if J. S. would not. Jones v. Cooper, Cowp. 227—*If you do not know him, you know me, and I will see you paid.* Matson v. Wharam, 2 T. R. 80. [If the Person for whose Use the Goods are furnished be liable, any other Promise by a third Person to pay, must be in Writing, per Buller, ibid.] an Application to trust Defendant's Son on Defendant's Credit—Use him well and I will be bound for the Money, as far as £800 or £1000, the Son being debited and applied to for Payment—Question submitted to the Jury if any Credit was given to the Son—if so to find for Defendant—Verdict and Judgment for Defendant accordingly. Anderson v. Hayman, 1 H. Bl. 120,

or to charge any Person upon any Agreement made upon Consideration of Marriage; (6) or upon any Contract or Sale of Lands, Tenements or Hereditaments, or any Interest in or concerning them; (7) or upon any Agreement that is not to be performed within the Space of One Year from the making thereof; (8) unless the Agreement (9) No. 17. 29 Car. II. c. 3.

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to pay a Composition on the Debt of another, and Law Expences incurred—bad for the Whole. Chater v. Beckett, 7 T. R. 201.

It does not extend to a Promise to pay—for not further prosecuting a Suit against Defendant, and others for a Tort. Stephens v. Squire, 5 Mod. 205. to pay £50 in Consideration of withdrawing the Record in an Action against a third Person for an Assault. Read v. Nash, 1 Wils. 305. A Promise by Defendant to pay Rent, if Plaintiff would not distrain Goods assigned to Defendant and others. Williams v. Leaper, 2 Wils. 308. 3 Bur. 1886—parting with Goods in Consideration of Promise to pay. N. P. per Lord Eldon. Houlditch v Milne, 3 Esp. 86. A Case where Plaintiff having Policies of Assurance in his Hands as a Security against Acceptances, for J. S delivered them to Defendant on his Promise to provide for the Acceptances. Castling v. Aubert, 2 East, 325—Agreement to assign Debt of A. B. to C. D. in Consideration of Ten Shillings in the Pound. This is a Purchase of the Debt, and A. B. is discharged. Anstey v. Marden, 1 B. and P. N. R. 124.

(6) Mutual Promises of Marriage are not within the Act. Cork v. Baker, 1 Str. 34. Harrison v. Cage, 1 Ld. Raym. 386. The Contrary had been determined, in Philpott v. Wallet, 3 Lev. 65.

(7) Contract for Purchase of a growing Crop of Grass to be mown and made into Hay by the Vendee, is a Contract for an Interest in Land, and within the Statute, Crosby v. Wadsworth, 6 East, 602. So a Sale of growing Turnips, their Maturity not being stated. Emmerson v. Heelis, 2 Taunton, 38.—Sale of Potatoes to be got immediately, is not. Parker v. Staniland, 11 East, 362. and see accordingly Warwick v. Bruce, 2 M. and S. 205. Plaintiff let Defendant Land, to be paid a Moiety of the Crops in Lieu of Rent, an Appraisment agreed to between the Parties, amounts to a Case of Goods sold and delivered, and is not within the Statute, Poulter v. Killingbeck, 1 Bos. and Bull. 397, Plaintiff agreed to accept A. B. as Tenant upon Defendant agreeing to pay Plaintiff £40, Part of £100, agreed to be paid by A. B. the Money being paid, Assumpsit lies for the £40, the Contract being executed, Griffith v. Young, 12 East, 513. A Parol Licence for an Easement to the Owner of adjoining Premises, is good, and not within the Statute. See Wood v. Lake, Say. 3. Winter v. Brockwell, 8 East, 308.

An equitable Mortgage by deposit of Title Deeds, was established in Russel v. Russel, 1 Bro. Ch. 269, and is now a Matter of daily Occurrence. This is mentioned in Ex parte Finden, 11 Ves. 404 n. as the first Case which broke in upon the Statute, and let in Evidence which it was the very Object of the Statute to exclude. But the Doctrine although disapproved, is not to be disturbed. Ex parte Haigh, 11 Vesey, 403. Norris v. Wilkinson, 12 Ves. 197.

(8) This does not apply to Contracts upon an Event which may or may not happen within a Year, as Marriage, Death, the Arrival of a Ship, Anon. Salk. 280, Peter v. Compton, Skinner, 353. Fenton v. Emblers, 3 Burr. 1278. Where it appears by the Facts of the Case that the Engagement was not intended to be performed within a Year (as the Subscription for Boydell's Shakspeare) though Part was performed in that Time, the Case is within the Statute, Boydell v. Drummond, 11 East, 142.

(9) The Term *Agreement*, here seems to import no more than Promise or Engagement, and was not considered as having any other Construction until the well-known Case of Wain v. Warlters, 5 East, 10, where, from a fanciful Derivation of the Term *Agreement* from *agregatio mentium*, it was decided, that it imports something to be done on both Sides, and that the Consideration must appear upon the Face of an Instrument, by which a Person engages for the Debt of another. In Stadt. v. Lill 9 East, 348, the Consideration was held to be sufficiently shewn in an Agreement undertaking to Guarantee the Payment of any Goods which A. might deliver to B. The Decision in Wain v. Warlters, is disapproved by Lord Eldon, in Exparte Minet, 14 Vesey, 189, Exparte Gardom, 15 Vesey, 286, and it is a Case which has been more disapproved by the Profession, and is certainly more inconvenient in itself than

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29 Car. II. c. 3.

upon which such Action shall be brought, or some *Memorandum* or Note thereof, shall be in Writing, and signed (10) by the Party to be charged therewith, (11) or some other Person thereunto by him lawfully (12) authorized. (13)

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any Decision of modern Times. See the Observations on the Grounds of the Decision in Fell's Treatise on mercantile Guarantees. App. IV. In Bateman v. Phillips, 15 East, 272, it was ruled that a Letter to an Attorney stating, "I trust you will give A. B. Indulgence till next Week, when I will undertake to see you paid," was a sufficient Promise to pay the Debt for which the Attorney was employed to sue. See, further, Notes to Sec. 17, infra.

(10) The Signature need not necessarily be at the Foot of the Instrument; but the mere Writing of the Name of the Party in the Body of an Instrument containing Instructions for a Lease, as "A. B. to pay C D. &c." being only applicable to a particular Purpose, and not intended as a Signature, is not sufficient, Stokes v. Moore, 1 Cox P. Wms. 771 N. So the Altering a Draft is not a Signature, Hawkins v. Holmes, 1 P. W. 770. See Sanderson v. Jackson, Note to Sec. 17, infra. Signature as a Witness, knowing the Contents, was held sufficient by Lord Hardwicke, in Wilford v. Beazely, 1 Wils. 118, 3 Atk. 503. Sed. Qu. the Question of a Knowledge of the Contents so as to attach to the Fact of Attestation, an Effect and Import which it does not bear upon the Face of it, involves the Subject in all the Danger of Parol Evidence.

(11) A Party, who has himself signed the Agreement, cannot object, that it is not signed by the other Party, as is settled by a Series of Cases, from Hutton v. Gray, 2 Cha. Ca. 164, decided about seven Years after the Statute, to Seton v. Slade, 7 Ves. 265. This is a strong Illustration of the Principle, that the Writing required is the Evidence and not of the Essence of the Contract.

(12) The Authority of the Agent need not be given in Writing—Coles v. Trecothick, 9 Vesey, 234, 250, Clinan v. Cooke, 1 Schoales, and Lefroy, 22—but this is expressly required with Respect to the Subjects mentioned in Sec. 1. The Clerk of an Agent is not generally authorized to sign—but held sufficient in the particular Case upon Evidence of Assent. Coles v. Trecothick, ub. supra. See Mortlock v. Buller, 10 Ves. 292, in which, under a Power to Trustees to sell at the Request of A. B. a general Consent of the Trustees to sell was held not to constitute A. B. an Agent for the Trustees to enter into a Contract. An Authority to a Steward, to sell by Auction, does not authorize a Sale by private Contract.—Daniel v. Adams, Amb. 495. It was ruled, in Walker v. Constable, 1 Bos. and P. 306, that an Auctioneer, upon a Sale of Land by Auction, is not such an Agent of both Parties as to make his Entry of the Sale operate as a Signature of the Purchaser, contrary to the Doctrine established with Respect to Sect. 17, as to Sales of Goods. See Lord Eldon's Observations upon this Subject, in Coles v. Trecothick. See the Observations of Sir Wm. Grant, Buckmaster v. Harrop, 7 Vesey, 341, and of Lord Erskine upon Appeal, 13 Vesey, 456, and the Opinion of Sir Wm. Grant, Higginson v. Clowes, 15 Vesey, 516.

In Emmerson v. Heelis, 2 Taunt. 38, it was decided, that the writing down the Name of the Purchaser, by the Auctioneer, is a signing by an Agent for the Purchaser, although for the Sale of an Interest in Land—and this is confirmed by White v. Proctor, 4 Taunt. 209. It does not seem to have been noticed, that, at the Time of writing down the Name, it is not intended as the Record of a Purchase, but only of a Bidding.

(13) In Addition to the preceding Notes on this Section, it will be proper to advert briefly to the following Heads:

An Agreement, expressed by Letter, is sufficient.—Moor v. Hart, 2 Ch. Rep. 147, 1 Vernon, 110. So a Proposal by Letter acceded to by Parol.—Coleman v. Upcot, 5 Viner, 527. A Proposal by Letter for a Daughter's Portion, afterwards retracted and again agreed to by Parol.—Bird v. Blosse, 2 Vent. 361. A Proposal at first refused but afterwards consented to.—Hodgson v. Hutchenson, 5 Viner, 522. This seems to be an incorrect Decision, not merely with Reference to the Statute, but upon general Principles—for, in ordinary Cases, a Proposal may be retracted at any Time before Acceptance, and is no longer obligatory after actual Refusal. Ruled, that a Letter by the Defendant to his Daughter, whom the Plaintiff courted, intimating that he had met the Plaintiff, and agreed to give him a Portion, which Letter was not communicated to the Plaintiff, was

V. And be it further enacted by the Authority aforesaid, That from and after the said Four and Twentieth Day of *June* all Devises and Bequests of any Lands or Tenements, deviseable either by Force

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Devises of Lands shall be in Writing, and attended by Three or Four Witnesses.

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not binding, being no more than a mere Communication.—Ayliffe v. Mr. Justice Tracy, 2 P. Wms. 65. See Wankford v. Fotherley, 2 Vern. 322. —Maxwell v. Lady Montacute, Prec. Ch. 526, 1 P. Wms. 618.—Allan v. Bower, 3 Bro. Ch. 149.—Luder's v. Anstey, 4 Vesey, 501—5 Vesey, 213. There is a Difference between the 4th and 7th Sections of the Statute: the latter only requires, that a Trust shall be manifested by Writing, not that it shall be constituted by Writing—and the former requires the very Agreement to be in Writing.—Per Sir Wm. Grant, in Randall v. Morgan, 12 Ves. 67.

3 Lev. 86.
Carthew 35, 514
3 Mod. 218, 262.

A Letter or other Paper, duly signed, clearly referring to another Paper, which contains the Terms of the Agreement, is sufficient—Tawney v. Crowther, 3 Bro. Ch. 161, 318—but there must be an actual Reference; and an Agreement for a Lease, not specifying a definite Term, or referring to an Advertisement in which such Term was expressed, cannot be connected with the Advertisement by parol Evidence.—Clinan v. Cooke, S. & L. 22. The Cases of Seagood v. Meale, Prec. Ch. 560—Clerk v. Wright, 1 Atk. 12—Whaley v. Bagenal, 1 Bro. P. C 345—and also Clinan v. Cooke, decide, that a Letter referring to an Agreement, but not specifying the Terms of it, is not sufficient. In Brodie v. St. Paul, 1 Vesey, jun. 326, it was held, that a Reference in an Agreement to such Parts of another Paper as had been read to the Party was not sufficient.

An Alteration of an Agreement, relating to a Subject within the Statute, is as much affected by the Statute as an orignal Agreement, and requires the same Solemnities.

Sufficient Attention has not always been paid, in this Respect, to the Distinction between Cases where Writing was necessary from the Nature of the Subject, and those in which it had only been accidentally resorted to in the original Agreement.—See Cokes v. Mascal, 2 Vern. 34.—Jordan v. Sawkins, 1 Ves. jun. 402.—Rich. v. Jackson, 4 Bro. Ch. 514.—Robson v. Collins, 7 Vesey, 130. The Disallowance of parol Evidence, to shew that other Terms, not expressed, were intended to perform Part of a written Agreement, does not depend so much upon the Statute, as upon the general Rule of Law. that parol Evidence cannot be admitted to vary the Terms of an Agreement.—See, upon this Subject, the Distinction between Cases of a Plaintiff requiring the Performance of an Agreement different from that expressed, and those of a Defendant resisting Performance on the Ground of Fraud or Surprise—Young v. Clark, Prec Ch. 538.—Legal v. Miller, 2 Vesey, 576—Buxton v. Lister, 3 Atk 383.—Shirley v. Stratton, 1 Bro. Ch. 440.—Stangron v. Marquis of Townsend, 6 Vesey, 328.—Clarke v. Grant, 14 Vesey, 519.—Higginson v. Clowes, 15 Vesey, 516. See also Price v. Dyer, 17 Vesey, 356, in which the original Agreement was enforced, notwithstanding a subsequent parol Agreement to add other Terms in Favour of the Defendant. In this Case most of the Authorities upon the Subject are referred to.

For Cases of decreeing Performance of an Agreement, not conformable to the Statute, on the Ground of Fraud, see Cooke v. Mascal, 2 Vern. 34 and 200.—Mallet v. Halfpenny, cited Pr. Ch. 404.

For Cases in which a Person, who has dissuaded another from making or altering his Will, upon an Engagement to comply with his Intention, has been compelled to perform such Engagement, see Chamberlaine v. Chamberlaine, 2 Freem. 34, 2 Eq. Ca. ab. 43, Prec. Ch. 4.—Devenish v. Baines, Prec. Ch. 3.—Oldham v. Litchford, 2 Vern. 506—Reech v. Kennegal, 1 Vesey, 123—Barrow v. Greenough, 3 Vesey, jun. 152.

It is a well known Exception, which Courts of Equity have introduced in the Construction of the Statute, that the Benefit of it shall not be taken against an Agreement which has been in Part performed; and Buller, J. in Brodie v. St. Paul, 1 Vesey, jun. 333, intimated an Opinion, that the same Rule would prevail at Law—but the contrary Opinion was strongly expressed by Lord Eldon, in Cooth v. Jackson, 6 Vesey, 29. The Inclination of Courts of Equity, in modern Cases, has been rather to narrow than to extend the Doctrine of part Performance.

No. 17. 29 Car. II. c. 3. of the Statute of Wills, or by this Statute, or by Force of the Custom of *Kent*, or the Custom of any Borough, or any other particular

It is clearly settled, that giving Directions for Conveyances, and going to view the Estate, are not Acts of part Performance.

Marriage is also clearly not such a Performance as takes an Agreement, in Consideration of it, out of the Statute.

It seems to be now settled, that Payment of Part of the Purchase-money is not such a Performance as takes a Case out of the Statute.—See Buckmaster v. Harrop, 7 Vesey, 341. Sir Wm. Grant there said, that even if Payment of the Auction Duty could be considered as a Part of the Price, he did not see how that could bind the Purchaser. In general, the Party selling must shew a Performance on his Side, as a Reason for the Interference of the Court in his Favour—for the Ground upon which the Court acts is Fraud, in refusing to perform after the Performance of the other Party. In Climan v. Cooke, 1 Sch. & Lef. 22, 40, Lord Reddesdale held, that the Payment of Money was not a Part Performance—and said, that he took it that Nothing would be a Part Performance, which does not put the Party into a Situation that would be a Fraud upon him, unless the Agreement was performed. Taking Possession by a Purchaser, and cutting Crops, is Part Performance.—Buckmaster v. Harrop, on Appeal, 13 Vesey, 456. A Tenant's continuing in Possession, upon an alleged new Agreement, is not.—Trame v. Dawson, 14 Vesey, 386. In that Case Sir Wm. Grant said, "Part Performance must be an Act unequivocally referring to and arising out of the Agreement, and such that the Party would suffe an Injury amounting to Fraud by the Refusal to execute the Agreement." He also considered it an Objection to a specific Performance, that the Act in Question was such as would easily admit of Compensation without executing the Agreement. See the Observations of Lord Redesdale, as to the Relaxations of the Statute.—Lyndsay v. Lynch, 2 Sch. & Lef. 5.—See, as to part Performance, the Note to Pym v. Blackburne, 3 Vesey, 34. As to Difficulties which may occur, when the Defendant admits the Acts alleged as part Performance, but denies the Agreement in Respect of which they are alleged to be performed, see Foublanque's Notes on Treatise of Equity, B. 1, Ch. 3, § 8.

If a Defendant deny that any parol Agreement ever took Place, a Court of Equity will not inquire into the Truth of that Denial.—Per Lord Eldon, Cooth v. Jackson, 6 Vesey, 12. Where a Plaintiff had built a House, his Witness proved an Agreement different from that of the Bill, and the Answer stated an Agreement different from both, the Lord Chancellor said, that, in Strictness, the Bill ought to be dismissed—but, on Account of the Expenditure, decreed specific Performance of the Agreement admitted by the Answer, with Costs against the Plaintiff.—Mortimer v. Orchard, 2 Ves. jun. 243. But in Woollam v. Hearn, 7 Vesey, 211—Lyndsey v. Lynch, 2 Sch. and Lef. 1, the Plaintiff having failed in establishing the Agreement insisted upon, the Court would not decree the Agreement admitted, but dismissed the Bill without Prejudice to filing a fresh Bill.

It is settled, that if a Defendant, by Answer, admits the Agreement stated in the Bill, and does not insist upon the Statute, Performance will be decreed; but whether he is bound to admit or deny the parol Agreement, so that the Effect of the Statute is only to exclude Evidence aliunde—whether he must take Advantage of the Statute, by Way of Plea—or whether, admitting the Agreement, he may insist upon the Statute, by Way of Answer, are Points not absolutely settled.—See Cottington v. Fletcher, 2 Atk. 155.—Lacon v. Mertins, 3 Atk. 4.—Rondeau v. Wyatt, 2 H. Bl. 63.—Eyre v. Ivison, cited 2 Bro. Ch. 563.—Stewart v. Careless, ib. 565.—Moore v. Edwards, 4 Vesey, 23.—Whitchurch v. Bevis, 2 Br. Ch. 559. It seems, however, to be the prevalent Opinion, that it is sufficient to claim the Benefit of the Statute by the Answer—see Cooth v. Jackson, 6 Vesey, 12—but if the Defendant does not insist upon the Statute, in the Answer to the original Bill, he cannot do so in the Answer to the amended Bill, id. and Spurrier v. Fitzgerald, 6 Vesey, 548.

Custom, (14) shall be in Writing, and signed (15) by the Party so devising the same, or by some other Person in his Presence and by his express Directions, and shall be attested and subscribed (16) in the Presence (17) of the said Devisor by Three or Four credible (18) No. 17. 29 Car. II. c. 3.

(14) The Statute does not extend to Copyholds surrendered to the Use of a Will, nor to Devises in Execution of a Power—but a Power to appoint by Will generally is held to mean, with Respect to Lands, a Will conformable to the Statute.—See Sugden on Powers, c. 5, § 3. A Person cannot create a Power to devise by his own Will, otherwise than according to the Statute.—Habergham v. Vincent, 2 Vesey, jun. 204.

A Term of Years is not within the Statute, unless attendant upon the Inheritance, in which Case it is not severed by a Will not duly attested.—Whitchurch v. Whitchurch, 2 P. Wms. 236.

A Will duly attested, charging Legacies on Lands, extends to Legacies given by an unattested Codicil—Brudenelle v. Boughton, 2 Atk. 258, vi. 8 Vesey, 495—but it must be a general Legacy, and not a specific Charge, which cannot be made by an unattested Codicil, under a Power expressed for the Purpose in a regular attested Will.—Rose v. Cunynghame, 12 Vesey, 29.

(15) In some of the older Cases, sealing was held a sufficient Signing; but in Ellis v. Smith, in Chan. 1754, Reported 1 Ves. jun. 11, the contrary Opinion was expressed by Parker, C. B. Willes, C. J. and Sir John Strange, M. R. who assisted the Lord Chancellor. The same Opinion was expressed by Lord Eldon, in Wright v. Wakefield, 17 Ves. 459. Writing the Name at the Top, may be a sufficient Signing.—Lemayne v. Stanley, 3 Lev. 1.

(16) An Attestation with a Mark is sufficient.—Harrison v. Harrison, 8 Vesey, 185, 504. The Witnesses may attest at different Times.—Cook v. Parsons, Prec. Ch. 186.—Jones v. Lake, 2 Atk. 176.

(17) This Clause does not require the Will to be signed by the Testator in the Presence of the Witnesses, but only, that it shall be attested by the Witnesses in the Presence of the Testator—whereas the next Clause, as to Revocation, requires the Signature in the Presence of the Witnesses, but not the Attestation of the Witnesses in the Presence of the Testator. It is sufficient if the Testator might see the Witnesses attest, and not necessary that he actually should do so—as when the Testator was in a Carriage, and the Attestation in a House, it being sworn that the Testator might see what passed.—See Cosson v. Dade, 1 Bro. Ch. 99.—Shires v. Glascock, 2 Salk. 688. But where the attesting Witnesses retired from the Room, where the Testator had signed, and subscribed their Names in an adjoining Room, and the Jury found that from one Part of the Testator's Room, a Person, by inclining himself forwards with his Head out of the Door, might have seen the Witnesses, but that the Testator was not in such a Situation, that he could have seen them by so inclining, the Will was held to be not duly attested.—Doe dem. Wright v. Manifold, 1 M. & S. 294. If the Testator is in a State of Insensibility, at the Time of the Attestation, such Attestation is void.—Right v. Price, Doug. 241. The Rule of the Civil Law, *Coram Titio aliquid facere jussus non videtur eo præsenti fecisse nisi is intelligat. Itaque si furiosus, aut infans sit aut dormiat, non videtur coram eo fecisse.* Dig. £5. tit. 16, de verb, sig. l. 209, is very apposite to this Subject. It is not necessary that the Attestation should express, that it was made in the Presence of the Testator.—Hands v. James, Com. Rep. 531.—Bruce v. Smith, Willes' Rep. 1. An Attestation, "Signed, sealed, published, and declared in the Presence of " is Evidence to a Jury, that the Attestation was made in the Presence of the Testator.—Croft v. Pawlet, 2 Strange, 1109.

(18) A Person attainted of Felony held not a credible Witness.—Pendock v. Mackender, 4 Burr. Eccl. L. 104. As to the Objection of Interest, see Stat. 25 G. II. c. 6. post Title Wills.

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Witnesses, or else they shall be utterly void (19) and of none Effect. (20)

How the same shall be revocable. 3 Mod. 260.

VI. And moreover, no Devise in Writing of Lands, Tenements, or Hereditaments, nor any Clause thereof, shall at any Time after the said Four and Twentieth Day of *June* be revocable, otherwise than by some other Will or Codicil in Writing, or other Writing declaring the same, or by burning, cancelling, tearing, or obliterating (21) the same by the Testator himself, or in his Presence and by his Directions and Consent; but all Devises and Bequests of Lands and Tenements shall remain and continue in Force, until the same be burnt, cancelled, torn or oblitered by the Testator, or his Directions, in Manner aforesaid, or unless the same be altered by some other Will (22) or

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(19) It is by Force of these Words, that a Will of Land, not duly attested, is not sufficient even to put the Heir to his Election, with Respect to Personal Estate.—See the Case ex-parte the Earl of Ilchester, 7 Vesey, 348, 372.—See also the Observations on Thelluson v. Woodford, 13 Vesey, 223. A Wish has been often expressed by great Authorities, that all testamentary Acts should be rendered subject to the Solemnities required by the Statute; and certainly the Importance of such a Provision is extremely evident, when it is considered how much the Intentions of a Testator may be defeated by a Will which is founded on one arranged Plan, being partly good and partly void. The Uncertainty, as to what shall or shall not constitute a sufficient Manifestation of the Will, with Respect to Personal Estate, is also extremely inconvenient, and a great Source of Litigation.—See the Observations of Lord Loughborough upon this Subject, Matthews v. Warner, 4 Vesey, 186.

(20) As to Wills of Land in the Plantations, see Stat. 25 G. II. c. 6, post Title Wills.

(21) A beginning to cancel under the Impression that a new Will is complete and desisting upon being informed the Contrary is no Revocation. Hyde v. Hyde, 1 Eq. Abi. 409. So a Cancellation upon making a new Will which is invalid by Reason of the Witnesses not attesting in the Presence of the Testator. Onyons v. Tyrer, Prec. Ch. 459.—1 P. Wms. 344. Con. Ed.—Throwing the Will into the Fire with Intent to destroy it is sufficient, though it falls off and is preserved. Bibb v. Thomas, 2 Bl. Rep. 1043. The Obliteration of a Part is only a Revocation as to that Part. Sutton v. Sutton, Cowp. 812. Striking out the Name of one Joint Tenant has the Effect of leaving the entire Estate in the other. Aliter as to Tenants in common who cannot thereby acquire an Estate not originally given. Larkins v. Larkins, 3 Bos & P. 16, 109. See also as to the first Point, Short v. Smith, 4 East. 419.—Whether obliterating the Names of some Trustees or other Devisees and substituting others is a Revocation, as to the former Purpose not being effectual as to the second, Qu. ibid. A Cancellation of the one Part is a Revocation of Duplicates. Burtenshaw v. Gilbert, Cowp. 49. See Pemberton v. Pemberton, 13 Vesey, 290. In that Case the Testator made Duplicates of his Will, and afterwards altered, and subsequently cancelled one Part—the one Part uncancelled, and the other altered and cancelled, and a Codicil without a Date were found in his Possession at his Death—and a Verdict in Favour of the Will was sustained.—The immediate Decision was on the Fact of an Intention to cancel, but the legal Doctrines are very fully gone into.

(22) A subsequent Will of Lands is only a Revocation so far as the Dispositions are inconsistent.—Coward v. Marshall, Cro. Eliz. 721. A finding that the Testator afterwards made another Will of which the Contents are unknown—or that the Testator made a subsequent Will *different* from the first, but in what Particular is unknown, and that it does not appear what became of the second Will, is not sufficient to revoke the first.—Hungerford v. Nosworthy, Sho. P. C. 146.—Hutchins v. Bassett, Salk. 592.—Harwood v. Goodright, Cowp. 87.—7 Bro. P. C. 8vo. 489.

A Will with a Clause of Revocation conformable to this Section, being signed by the Testator in the Presence of the Witnesses, but not valid as a Will not being attested in the Presence of the Testator, is not a Revocation, not being intended for such as an independent Act.—See Onyons v. Tyrer, supra No. 21.—Egglestone v. Speake, 3 Mod. 258.—1 Sho. 89.

Codicil in Writing, or other Writing of the Deviser, signed in the Presence (23) of Three or Four Witnesses, declaring the same; (24) any former Law or Usage to the contrary notwithstanding. (25)

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All Declarations or Creations of Trusts shall be in Writing.
Explained by 4 Anne, c. 16, Section, 15, Post.

VII. And be it further enacted by the Authority aforesaid, That, from and after the said Four and Twentieth Day of *June*, all Declarations or Creations of Trusts or Confidences of any Lands, Tenements, or Hereditaments, shall be manifested and proved (26) by some Writing signed by the Party who is by Law enabled to declare such Trust, or by his last Will in Writing, or else they shall be utterly void and of none Effect.

It is to be observed, however, that in those Cases the substantial Dispositions were the same in both Wills, as to the Materiality of which vi. ex parte the Earl of Ilchester, 7 Ves. 373.

(23) A Will, acknowledged as such in the Presence of three Witnesses, is good—and, although not signed in their Presence, a sufficient Revocation—and, though being a Devise to an Heir at Law, void as a Will, is a valid Instrument of Revocation, being executed according to the Statute.—Ellis v. Smith, 1 Vesey, jun. 11.

(24) A Declaration of the Testator, certified by three Witnesses, but not signed by him, that he revokes his Will, is void.—Hilton v. King, 3 Lev. 86.

(25) It is completely settled, that the Provisions of this Section do not extend to Revocations by Operation of Law, such as a subsequent Marriage and the Birth of a Child —See Doe on the Demise of Lancashire v. Lancashire, 5 T. R. 49—in which this was decided, in Respect to a posthumous Child, and the Doctrine considered as resting rather upon a tacit Condition than upon an implied Revocation; but it may be qualified by Circumstances, where the Subsistence of the Will is not inconsistent with the new Relations which are contracted.—See Brady v. Cubitt, Doug. 39, and more particularly Kenebel v. Scrafton, 2 East. 530—in which a Testator made Provisions in Favour of the Children that he should have by A. B. with whom he then cohabited and afterwards married and had Children by; a total Want of Provision for the Family so newly constituted being considered as the Basis of the tacit Condition—and see ex-parte the Earl of Ilchester, 7 Vesey, 348, which related to the Revocation of a testamentary Appointment of a Guardian, referred to in Note to Stat. 29 Ch. II. c. 24, ante No. 15.

The Case upon this Subject, contained in the additional Note (*a*) *infra*, has already been published by the Editor, in a Note to Lugg v. Lugg, 2 Salk. 592.

That a tacit Recovation by subsequent Marriage and Birth of Child, without Provision, can be rebutted by parol Evidence, is *affirmed* per Cur Lord Raymond, 441, Doug. 31—per Eyre, 2 H. Blackst. 522; *negatived* per Lord Alvanley, 4 Ves. jun. 848—Lord Rosslyn, 5 Ves. jun. 664.

The Doctrine of Revocation, by an Alteration of the Estate, is referred to in Note to 32 H. VIII. c. 1, post Title Wills, No. 1.

The Cases respecting the Republication of Wills chiefly relate to the Rule, that a Will as to Real Estate can only operate upon the Land which the Testator has at the Time of the Execution—and establish, 1st. That a Republication of a Will gives it the same Effect as if originally made at the Time of the Republication—see Marten v. Savage, 1 Ves. 440—and, 2d, That a Codicil confirming a Will gives Effect to the whole Will, as if made at the Time of publishing the Codicil, whether the Codicil be annexed to the Will or not,—see Acherley v. Vernon, Com. R. 381, 3 Bro. P. C. 107—Barnes v. Crowe, 1 Vesey, jun. 486, 4 Bro. Ch. 2—Pigott v. Waller, 7 Vesey, 98,—except the Expressions of the Will or Codicil are of so qualified a Nature as to require a different Construction.—Strathmore v. Bowes, 7 T. R. 482—2 Bos. & Pull. 500.—Holmes v. Coghill, 7 Ves. 499.—Lane v. Wilkins, 10 East. 242. The Cancelling a second Will revives the first, which was thereby revoked—Goodright v. Glazier, 4 Bur. 2512—but if one Part of a Will, of which there are Duplicates, be cancelled at the Time of making the second, the other Duplicate then not being in the Testator's Possession, the first is not revived by cancelling the second.—Burtonshaw v. Gilbert, Cowp. 49—and see Pemberton v. Pemberton, mentioned in Note 21.

(26) The fullest Information, as to the Principle which has been adopted with Respect to the Construction of this Clause, is to be derived from the Case of Forster v. Hale, 3 Vesey, 696, in which it was held, that an Agreement

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Trusts arising, transferred or extinguished by Implication of Law, are excepted.

VIII. Provided always, That where any Conveyance shall be made of any Lands or Tenements by which a Trust or Confidence shall or may arise or result by the Implication or Construction of Law, or be transferred or extinguished by an Act or Operation of Law, then and in every such Case such Trust or Confidence shall be of the like Force and Effect as the same would have been if this Statute had not been made; any Thing herein before contained to the contrary notwithstanding. (27)

Assignments of Trusts in Writing.

IX. And be it further enacted, That all Grants and Assignments of any Trust or Confidence shall likewise be in Writing, signed by the Party granting or assigning the same, or by such Last Will or Devise, or else shall likewise be utterly void and of none Effect.

Lands, &c. shall be liable to the Judgments, &c. of Cestuy que Trust;

X. And be it further enacted by the Authority aforesaid, That, from and after the said Four and Twentieth Day of *June*, it shall and may be lawful for every Sheriff or other Officer to whom any Writ or Precept is or shall be directed, at the Suit of any Person or Persons,

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for one Person to be a Trustee for others might be made out by Letters, in which he admitted himself to be such—and that, according to the true Meaning of the Statute, it is sufficient if it appears in Writing, under the Hand of a Person having a Power to declare himself a Trustee, which is equivalent to a formal Declaration of Trust. The Master of the Rolls, (Sir R. P. Arden,) observed, that it is not required that the Trust should be created in Writing, and the Words of this Clause are very particular it does not by any Means require that all Trusts should be created only by Writing—but that they shall be manifested and proved by Writing, plainly meaning that there should be Evidence in Writing proving that there was such a Trust. He admitted that it must be proved in toto, not only that there was a Trust, but what it was. In the particular Case, his Honor, from several Letters and Papers, inferred an Agreement, that the Lessee of a Colliery took it on Account of himself and other Persons with whom he was engaged in Partnership—See also Randall v. Morgan, 12 Vesey, 73, 74.

(27) The most common Case of Trusts by Operation of Law is where an Estate is purchased by one Man and the Purchase Money paid by another.—See the Cases referred to in Forster v. Hale, mentioned in the last Note. Where a Person purchased an Estate in his own Name and insisted in Answer to a Bill alledging that it was made by him as Agent for the Plaintiff, that it was made on his own Account; Lord Northington refused to permit Parol Evidence of the Agency in Opposition to the Defendant's Answer, but said, that if the Plaintiff had paid any Money, it would have been a Reason with him to admit the Evidence. The Defendant was afterwards convicted of Perjury upon his Denial of the Trust, and a Petition was presented to the Lord Chancellor for leave to file a Supplemental Bill in the Nature of a Bill of Revivor, stating this Conviction, but the Petition was dismissed. Bartlett v. Pickersgill, cited 4 East. 577.

The general Presumption that where a Conveyance is made to one Person and the Purchase Money paid by another, the former is a Trustee for the latter, is rebutted in the Case of a Purchase made by a Father in the Name of his Child, which is, prima facia, an Advancement, even in Case of a Copyhold, where the Custom is to grant to three for their Lives *successivé*, and the Name of the Child is inserted as one of those Lives, but the Presumption on either Side may be rebutted by Circumstances or Parol Evidence.—See the Subject very particularly examined in the Case of Dyer v. Dyer, in the Exchequer, 1 Watkins on Copyholds, 216.—See also Rider v. Kidder, 10 Vesey, 360.—Finch v. Finch, 15 Vesey, 43.

Where a Trustee purchases Lands with the Trust Money and takes a Conveyance in his own Name, a Trust will result and Evidence may be given aliunde, that the Purchase was made with Trust Money, although denied by the Defendant's Answer.—Balgrey v. Balgrey, and Ryal v. Ryal, cited in Lane v. Dighton, Ambler 409.—See upon this Subject Perry v. Philips, 4 Vesey, 108, in which it was held there were not sufficient Circumstances to induce the Presumption that the Purchases were made in Execution of the Trust.—See also Fonblanque's Notes Treatise of Equity, B. II. c. 5, S. 1.

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of, for and upon any Judgement, Statute or Recognizance hereafter to be made or had, to do, make and deliver Execution unto the Party in that Behalf, suing, of all such Lands, Tenements, Rectories, Tithes, Rents, and Hereditaments, as any other Person or Persons be in any Manner of Wise seised or possessed, or hereafter shall be seised or possessed, in Trust for him against whom Execution is so sued, like as the Sheriff or other Officer might or ought to have done, if the said Party against whom Execution hereafter shall be so sued, had been seised of such Lands, Tenements, Rectories, Tithes, Rents, or other Hereditaments of such Estate as they be seised of in Trust for him at the Time of the said Execution sued; (28) which Lands, Tenements, Rectories, Tithes, Rents, and other Hereditaments, by Force and Virtue of such Execution, shall accordingly be held and enjoyed freed and discharged from all Incumbrances of such Person or Persons as shall be so seised or possessed in Trust for the Person against whom such Execution shall be sued; (29) and if any *Cestuy que Trust* hereafter shall die, leaving a Trust in Fee-simple to descend to his Heir, there and in every such Case such Trust shall be deemed and taken, and is hereby declared to be, Assets by Descent, and the Heir shall be liable to and chargeable with the Obligation of his Ancestors for and by Reason of such Assets, as fully and amply as he might or ought to have been, if the Estate in Law had descended to him in Possession in like Manner as the Trust descended; any Law, Custom or Usage to the contrary in any wise notwithstanding.

[illegible] the Incumbrances of the Persons seised in Trust.

Trusts shall be Assets in the Hands of Heirs.
2 Vern. 21[illegible]
c. 2[illegible]

XI. Provided always, That no Heir that shall become chargeable by Reason of any Estate or Trust made Assets in his Hands by this Law, shall by Reason of any Kind of Plea or Confession of the Action, or suffering Judgement by *Nient dedire*, or any other Matter, be chargeable to pay the Condemnation out of his own Estate; but Execution shall be sued of the whole Estate so made Assets in his Hands by Descent, in whose Hands soever it shall come after the Writ purchased, in the same Manner as it is to be at and by the Common Law, where the Heir at Law pleading a true Plea, Judgement is prayed against him thereupon; any Thing in this present Act contained to the contrary notwithstanding.

[illegible]

XII. And for the Amendment of the Law in the Particulars following; be it further enacted by the Authority aforesaid, That from henceforth any Estate *pur autre vie* shall be deviseable by a Will in Writing, signed by the Party so devising the same, or by some other Person in his Presence and by his express Directions, attested and subscribed in the Presence of the Devisor by Three or more Witnesses; and if no such Devise thereof be made, the same shall be chargeable in the Hands of the Heir, if it shall come to him by Reason of a special Occupancy, as Assets by Descent, as in Case of Lands in Fee-simple; and in Case there be no special Occupant thereof, it shall go to the Executors or Administrators of the Party that had the Estate thereof by Virtue of the Grant, and shall be Assets in their Hands. (30)

Estate pur autre vie [illegible] devise[illegible]
And [illegible] Heir.
And where there is no special Occupant shall go to the Executors.
Carthew. 376.
2 Salk. 464.
2 Vern. 719.
c. 307.

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(28) If the Trustee convey Lands after Judgment and before Execution to a Purchaser with Notice, the Land cannot be taken in Execution.—Hurst v. Coles, Comyns 226.—Higgins v. York Buildings Comp. 2 Atk. 107. Query, Whether the Land is liable in Case the Purchaser has Notice.—See Sugden on Venders and Purchasers, Ch. 9. on Searching for Incumbrances. A Conveyance in Trust to sell and pay Debts, and the Surplus to the Grantor is not a Trust within the Statute.—Ibid.

(29) A mere equitable Interest in a Term of Years cannot be taken in Execution under a Fi. Fa Scott v. Scholey, 8 East. 467. 2 N. R. 461.

(30) By Statute 14 Geo. II. c. 20, Sec. 9, after reciting this Section, and that Doubts had arisen where no Devise had been made of such Estates, [illegible]

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'XIII. And whereas it hath been found mischievous, that 'Judgements in the King's Courts at *Westminster* do many Times 'relate to the first Day of the Term whereof they are entered, or to 'the Day of the Return of the Original, or Filing the Bail, and bind 'the Defendants Lands from that Time, although in Truth they were 'acknowledged, or suffered and signed in the Vacation Time after 'the said Term, whereby many Times Purchasers find themselves 'aggrieved:'

The Day of signing any Judgment shall be entered on the Margent of the Roll. This Clause extends to Counties Palatine by 8 Geo. I. c. 25. sec. 6.

XIV. Be it enacted by the Authority aforesaid, That, from and after the said Four and Twentieth Day of *June*, any Judge or Officer of any of his Majesty's Courts of *Westminster*, that shall sign any Judgements, shall, at the signing of the same, without Fee for doing the same, set down the Day of the Month and Year of his so doing upon the Paper Book, Docket, or Record, which he shall sign; which Day of the Month and Year shall be also entered upon the Margent of the Roll of the Record where the said Judgement shall be entered.

And such Judgements as against Purchasers shall relate to such only.

XV. And be it enacted, That such Judgments as against Purchasers (31) *bona fide* for valuable Consideration of Lands, Tenements, or Hereditaments, to be charged thereby, shall, in Consideration of Law, be Judgements only from such Time as they shall be so signed, and shall not relate to the First Day of the Term, whereof they are entered, or the Day of the Return of the Original, or filing the Bail; any Law, Usage, or Course of any Court, to the contrary notwithstanding.

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whom the Surplus after the Death of such deceased Owners thereof are fully satisfied should belong, it is enacted, th[illegible]ch Estates *pour autre vie*, in Case there be no special Occupant there[illegible]hich do Devise shall have been made according to this Act, or so much[illegible]of as shall not have been so devised shall go to, be applied and distributed in the same Manner as the Personal Estate of the Testator or intestate.

There was no general Occupancy at Common Law of a Copyhold, and therefore these Statutes do not extend to such. Zouch, dem—Foise v. Foise, 7 East. 186. Although there was no general Occupancy of a Rent at Common Law it seems to be within the Statutes.—Rawlinson v. the Duchess of Montague, 3 P. Wms. 264 n. Kendal v. Micfield, Barnard Ch. 46. In Oldham v. Pickering, 2 Salk. 464, it was ruled in Prohibition that the Statute of Frauds only made Estates *pur auter vie* assets for the purpose of paying Debts, and not for the Purpose of Distribution, but in Witter v. Witter, 3 P. Wms. 101, they were held to be distributable in Chancery.—Any Question upon this Point is removed by Stat. 14, Geo. II.—In Ripley v. Waterworth, 7 Vesey 425, it was held on much Discussion that an Estate *pur auter vie* limited to Executors, Administrators and Assigns, was applicable to the Residuary Legatees of the Testator under a Will not attested by three witnesses, although devisable only as to the legal Estate by a Will so attested.—Upon a Limitation in a Lease for Lives to Heirs, Executors, Administrators and Assigns, the Interest goes to the Heir.—Atkinson v. Baker, 4 T. R. 229. I have seen opposite Opinions of Mr. Fearne and Lord Kenyon, as to the Case of Premises held under a Lease for Lives, to the Lessee, his Heirs and Assigns, devised by him without Words of Limitation, and the Right to which was disputed between the Heir and personal Representative of the Devisee.—The Opinion of Lord Kenyon was, that the personal Representative was entitled, which seems evidently correct, as there was no *designatio personæ* of the Heir of the Devisee, wherefore the Case is that of there being *no special Occupant*, so that by the Statute of Frauds the Estate devolves on the Executors.

(31) Except as against Purchasers the Land is bound as at Common Law from the first Day of the Term of which Judgment is signed.—See Sewil v. Wiltshire, Willes 428, n. In Holdger v. Templar, 6 Mod. 191, it is said by Lord Holt, C. J. that if Judgment be signed in Term Time, and in the subsequent Vacation the Defendant sell Lands, and before the Essoign Day of the next Term the Plaintiff enter his Judgment, it shall affect the Land in the Hands of the Purchaser, but Mr. Tidd (Practice, ch. 39 n.) makes a Q. 'If the Judgment be not docketed at the Time of the Sale.

XVI. And be it further enacted by the Authority aforesaid, That, from and after the said Four and Twentieth Day of *June*, no Writ of *Fieri facias*, or other Writ of Execution, shall bind the Property of the Goods (32) against whom such Writ of Execution is sued forth, but from the Time that such Writ shall be delivered to the Sheriff, Under Sheriff, or Coroners, to be executed: And, for the better Manifestation of the said Time, the Sheriff, Under Sheriff, and Coroners, their Deputies and Agents, shall, upon the Receipt of any such Writ, (without Fee for doing the same) endorse upon the Back thereof the Day of the Month or Year whereon he or they receive the same.

No. 17. 29 Car. II. c. 3. Writs of Execution shall bind the Property of Goods but from the Time of their Delivery to the Officer. 1 Salk. 320. Carthew 419. 1 Mod. 188. 2 Keb. 257.

XVII. And be it further enacted by the Authority aforesaid, That, from and after the said Four and Twentieth Day of *June*, no Contract for the Sale of any Goods, Wares, and Merchandizes, (33) for the Price of Ten Pounds Sterling, or upwards, shall be allowed to be good, except the Buyer shall accept Part of the Goods so sold, and actually receive the same, (34) or give Something in earnest to bind the Bargain, or in Part of Payment, or that some Note or *Memorandum* in Writing of the said Bargain (35) be made and

Contracts for Sales of Goods for Ten Pounds or more. Thuan. Hist. lib. 39. sec. 25. See 4 Bur. 2101.

(32) It was determined soon after the Passing of this Act, that it was only made to assist a Purchaser, and that it left the Party to the Suit as he was at Common Law.—Skin. 257, which was recognised by Lord Hardwicke, 2 Eq. ca. ab. 381, and per Curiam Hutchinson v. Johnson, 1 T. R. 729. A Judgment signed in any Part of the Term, or the subsequent Vacation, relates back to the first Day of the Term notwithstanding the Death of the Defendant before Judgment actually signed, and an Execution against the Goods of the Defendant may be taken out upon it tested the first Day of the Term.—Bragner v. Langmead, 7 T. R. 20, and see the Cases there cited.

(33) It was ruled in Towers v. Osborne, 1 Str. 506, that the Ordering a Carriage to be made, and afterwards in Clayton v. Andrews, 4 Burr. 2101, that a Contract for the Purchase of Corn which was to be thrashed was not within the Statute, and in these Cases the Principle was laid down that the Statute did not extend to executory Contracts to be performed at a future Time—but that Doctrine is now completely exploded.—Alexander v. Comber, 1 H. Bl. 20.—Rondeau v. Wyatt, 2 H. Bl. 63.—Cooper v. Elston, 7 T. R. 14, but the decisions in Towers v. Osborne and Clayton v. Andrews, are admitted to be good Law as relating to Contracts which were not confined to a mere Sale of Goods, and consisted partly of Labour to be performed.

(34) What is an Acceptance and Delivery.—1. A Purchaser by Auction coming the next Day to see the Goods weighed off.—Simon v. Metivier, 3 Burr. 1921, 1 Bl. 598.—2. The Purchaser of a Haystack selling Part of it to another Person who takes that Part of it away against the Approbation of the Vendee, the Party having dealt with it as in his own Possession.—Chaplin v. Rogers, 1 East. 192.—3. The Desiring the Seller of a Horse to keep it at Livery for the Buyer.—Elmore v Stone, 1 Taunt. 458.—4. Purchaser by Auction writing his Name on a particular Article as to that Article *secus* as to others.—Hodgson v. Le Bret, 1 Campb 233.—Anderson v. Scott, n. ibid. —5. The Purchaser at an Auction taking Samples to be included in the Price.—Hinde v. Whitehouse, 7 East. 558.

II. What not.—1. Taking a Sample not forming part of the Quantity to be paid for.—Cooper v. Elston, 7 T. R. 142. Ordering Goods by Parol at 11s. per Pound, and returning them with a Letter stating that they are not worth 6s.—Kent v. Huskinson, 3 Bos. & Pull. 233.

(35) A Memorandum by the Buyer agreeing to give ——— takes the Case out of the Statute, although not expressing any Consideration.—The Word *Bargain* in this Section not being held to have the same technical Signification with the Word *Agreement* in Section 4.—Egerton v. Matthews, 6 E. 307. As to this Distinction, See Fells Law of Guarantee, referred to ante Note 9.

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signed (36) by the Parties to be charged by such Contract, or their Agents thereunto lawfully authorized. (37)

The Day of the Enrolment of Recognizances shall be set down, and Lands in the Hands of Purchasers bound from that Time only.

XVIII. And be it further enacted by the Authority aforesaid, That the Day of the Month and Year of the Enrolment of the Recognizances shall be set down in the Margent of the Roll where the said Recognizances are enrolled; and that from and after the said Four and Twentieth Day of *June*, no Recognizance shall bind any Lands, Tenements, or Hereditaments in the Hands of any Purchaser *bona fide* and for valuable Consideration, but from the Time of such Enrolment; any Law, Usage, or Course of any Court, to the contrary in any wise notwithstanding.

Nuncupative Wills.

'XIX. And, for Prevention of fraudulent Practices in setting 'up Nuncupative Wills, which have been the Occasion of much 'Perjury;' be it enacted by the Authority aforesaid, That, from and after the aforesaid Four and Twentieth Day of *June*, no Nuncupative Will shall be good, where the Estate thereby bequeathed shall exceed the Value of Thirty Pounds, that is not proved by the Oaths of Three

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(36) The Court of Common Pleas, in Sanderson v. Jackson, 2 B. & P. 238, seemed to think the printed Title of a Bill of Parcels, "Mr. Bought of Jackson & Hankin," a sufficient Signature—but at all Events, that a Letter from the Defendant, the Seller, to the Plaintiff, wishing to know when the Order should be delivered, took the Case out of the Statute, on the Ground that the Jury had connected the Letter with the Bill of Parcels. But surely, with Regard to the first Point, to use, with a slight Variation, the Terms of the Chief Baron, in Stokes v. Moore, referred to supra, (Note 10,) a Name inserted at the [top] of an Instrument, and applicable to particular Purposes, could not be intended to be such an Authentication as the Statute required. As to the second Point, although the Letter referred to the Contract, it seems very doubtful, whether it was intended to refer to the particular written Evidence of the Terms of such Contract; and it could not be collected from the Letter itself, that there was any other Writing to which a Reference could be made. The Point does not appear to have been distinctly put to the Jury, and as this Part of the Case is wholly decided upon the Foundation of the Jury having found such Reference, the Case, as an Authority, amounts to no more than that the Evidence in Question was such as it was proper to leave to the Jury, upon the Point whether the Reference to the previous Writing was intended or not—and as to the Cases decided with Reference to this Principle, upon Sect. 4, see the Notes to that Section.* A Note signed by the the Seller in the Plaintiff's (the Buyer's) Memorandum Book, not mentioning the Plaintiff's Name, is not sufficient.—Champion v. Plummer, 1 N. R. 252.—Entry by the Plaintiff's Agent, in his Memorandum Book, not containing any Thing on the Face of it to shew it was a Book of Orders to the Plaintiff, in the following terms:—"John Smith—40 of 3—58. £—." (explained to mean an Order for forty Sacks of Flour, called Thirds, at 58s. a Sack,) read over by the Defendant's Desire, is not a Memorandum within the Statute—and a Letter, in which the Defendant admitted the Contract, but stated a certain Time as forming a Part of it, but proved by parol Evidence not to do so, cannot supply the Deficiency.—Cooper v. Smith, 15 East. 103.

* Since the preparing this Note it has been held, that the inserting the Name of the Buyer at the Head of a Bill of Parcels above the printed Words, "Bought of Thomas Norris," was a sufficient signature to bind the Seller.—Schneider v. Norris, 2 M. & S. 286.

(37) In Simon v. Metivier, mentioned supra Note 34, it was held, that an Auctioneer was Agent to both Parties, and that his setting down the Name of the Seller was sufficient to take the Case out of the Statute—and the Court were strongly inclined to think, that Sales by Auction were not within the Statute, but that as a general Proposition cannot be sustained, as appears by several of the Cases mentioned in the preceding Notes to this Section—but the Doctrine of the Entry of the Sale by the Auctioneer, being a Contract signed by him as Agent for both Parties, is established.—Emmerson v. Heelis, 2 Taunton, 38.—See Hinde v. Whitehouse, 7 East. 569, cited supra Note 34.—See also the Cases upon this Subject, as affecting Sales of Land, ante Note 14. The Writing of a *bought and sold Note* by the Broker, for the Seller, and delivering it to the respective Parties, has been held sufficient—Rucker v. Cammeyer, 1 Esp. Rep. 105, cited as frequently recognized, 15 E. 107—but one of the Parties cannot sign as Agent for the other.—Wright v. Dannah, 2 Camp. 203.

Witnesses (at the least) that were present at the making thereof; nor unless it be proved that the Testator, at the Time of pronouncing the same, did bid the Persons present, or some of them, bear Witness that such was his Will, or to that Effect; nor unless such Nuncupative Will were made in the Time of the last Sickness of the Deceased, and in the House of his or her Habitation or Dwelling, or where he or she hath been resident for the Space of Ten Days or more next before the making of such Will, except where such Person was surprized or taken sick, being from his own Home, and died before he returned to the Place of his or her Dwelling.

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29 Car II. c. 3.
Explained by 4 Anne, c. 16, § 14.

XX. And be it further enacted, That, after Six Months passed after the speaking of the pretended Testamentary Words, no Testimony shall be received to prove any Will Nuncupative, except the said Testimony, or the Substance thereof, were committed to Writing within Six Days after the making of the said Will

XXI. And be it further enacted, That no Letters Testamentary, or Probate of any Nuncupative Will, shall pass the Seal of any Court till Fourteen Days at the least after the Decease of the Testator be fully expired; nor shall any Nuncupative Will be at any Time received to be proved, unless Process have first issued to call in the Widow, or next of Kindred to the Deceased, to the End they may contest the same, if they please.

Probates of Nuncupative Wills.

XXII. And be it further enacted, That no Will in Writing concerning any Goods or Chattels, or Personal Estate, shall be repealed, nor shall any Clause, Devise, or Bequest therein be altered or changed by any Words, or Will by Word of Mouth only, except the same be in the Life of the Testator committed to Writing, and after the Writing thereof read unto the Testator, and allowed by him, and proved to be so done by Three Witnesses at the least.

Revoked [illegible]

XXIII. Provided always, That, notwithstanding this Act, any Soldier being in actual Military Service, or any Mariner or Seaman being at Sea, may dispose of his Moveables, Wages, and Personal Estate, as he or they might have done before the making of this Act.

Soldiers and Mariners Wills excepted.

XXIV. And it is hereby declared, That Nothing in this Act shall extend to alter or change the Jurisdiction or Right of Probate of Wills concerning Personal Estates, but that the Prerogative Court of the Archbishop of *Canterbury*, and other Ecclesiastical Courts, and other Courts having Right to the Probate of such Wills, shall retain the same Right and Power as they had before, in every Respect, subject nevertheless to the Rules and Directions of this Act.

The Jurisdiction of Courts saved.

XXV. And, for the explaining One Act of this present Parliament, intituled, *An Act for the better settling of Intestates Estates*, be it declared by the Authority aforesaid, That neither the said Act, nor any Thing therein contained, shall be construed to extend to the Estates of Femes Coverts that shall die intestate, but that their Husbands may demand and have Administration of their Rights, Credits, and other Personal Estates, and recover and enjoy the same, as they might have done before the making of the said Act.

22 & 23 Car. II. c. 10

Husbands not compellable to make Distribution of the Personal Estates of their Wives.
1 Mod. 231.

[Made perpetual by 1 Jac. II. c. 17, § 5]

(a) See Notes to Sec. 6. supra.—The following Note, relative to this Subject, was taken by the Editor:

"6th May, 1793. In the *Prerogative Court.*

"Wright against Netherwood.

[☞ A. makes a Will, leaving some Legacies, and appointing his Wife residuary Legatee; she died, leaving several Children. He married again, and had one Child by his second Wife. Afterwards A. with his Wife and all his Children perished by Shipwreck. The Will is not revoked.]

No. 17.
20 Car. II. c. 3.

"This Case arose on a Question, Whether the Will of George Netherwood, deceased, was or was not revoked?

"On the 24th *June* 1783, the deceased married Elizabeth Lomax, Spinster. On the 8th of *October* following he made his Will, whereby he charged his Real Estate with the Payment of Debts and Legacies, if his Personal should be deficient. He gave some pecuniary and specific Legacies, and bequeathed *the Residue* of his *Personal* Estate to *his Wife* by her maiden Name, Elizabeth Lomax, and devised the Real Estate to her for Life, remainder to one Joseph Netherwood; he appointed Wright, the Party, Executor of his Effects in *England*, and another Executor for his Effects in the *West Indies*.

"Afterwards Elizabeth died, leaving several Children by her Husband. The Testator married the Sister of his former Wife, and had Issue by her one Son.

"The said George Netherwood embarked for *England* from *Jamaica*, with his Wife, her Son, and all the Children by the former Marriage. The Ship in which they embarked was never afterwards heard of, and was admitted to be lost.

"The Will was proved by the Executor in *England*, in common Form, and he was afterwards cited by the next of Kin of the Deceased to prove it in solemn Form, or shew Cause why it should not be declared Invalid.

"The Facts were admitted on both Sides to be as above stated.

"By the Inventory the Property of the Deceased appeared to amount to about 8000*l*. The Legacies amounted to rather more than 200*l*.

"Sir William Scott and Dr. Nicholl in Support of the Will.—The Will in this Case was not revoked by the second Marriage and the Birth of a Child; for although it may be admitted as a general Principle, that these Circumstances do revoke a Will, on the Presumption that upon such a total Alteration of Circumstances the Testator did not continue to have the same Intentions; that Presumption is liable to be repelled by Circumstances. If it appears to be his Intention that the Will should stand, Marriage and the Birth of a Child will not destroy it.

"All presumptive Revocations are *stricti Juris*, and must be wholly inconsistent with the Deceased's Intention to dispose of his Property according to the Will.

"The general Principle of these Revocations is, that when a Person has contracted such new Obligations and Relations, it cannot be supposed that he meant to adhere to his former Disposition. That Principle is recognized by all the Cases upon the Subject, and they all proceed upon the Ground of a *total Alteration* in the Testator's Circumstances; but if there is not a total Alteration, the Implication is repelled.

"No Case can be stronger against a Revocation than this. When he was married he made a Will, by which he bequeathed some small Legacies, and disposed of the rest of his Property to his Wife. This might be in Confidence that she would take care of any Children he should have by her. The Wife dies, and the Residue becomes lapsed. He marries again, and his Fortune will take the same Course in point of Substance as if he had made no Will. The few Legacies will belong to the Persons to whom they were given, and the Residue would be subject to the Statute of Distribution.

"There are Cases in which it has been held, that this Alteration of Circumstances did not amount to a Revocation; where the Alteration was not such as to make the Court say, the Testator could not in Duty adhere to his Will. Such was the Case of Brown and Thompson, 1 Eq. Ca. Ab. 413, where it was held that the Alteration of Circumstances was not sufficient to amount to a Revocation; for no Injury was done any Person, and those whom the Testator was bound to provide for were taken care of; (Vide the Observations of Buller, J. upon this Opinion, in Doe v. Lancashire) the great Bulk would go to the Wife and Children; all the new Relations are fully satisfied; and there is no Probability of the Testator's not intending to adhere to his former Disposition. In Brady v. Cubitt, Doug. 31—38, it is said by Lord Mansfield, "That upon his Recollection there was no Case in which Marriage and the Birth of a Child have been held to raise an implied Revocation, where there has not been a Disposition of the whole Estate." And although that may not be Essential, it is certainly very Material. Presumed Revocations may exist where the Residue is very small, but it is otherwise where a small Part only is

disposed of, and the Bulk remains. In Thompson and Shepherd, mentioned in a Note to Amb. 490, it was held that Marriage and having Children did not amount to a Revocation of a Will made by a Widower who had Children. It was not that complete Alteration of Circumstances which implies the Revocation of a declared Intention. A Case of Calder and Calder, lately decided in the Prerogative Court, does not apply. It depended on its own Circumstances; and there was no Power to presume that the Testator adhered to his Intention. That was the Case of a Will made by a Widower having no Children; he had no View to the Relations of Husband and Father. The great Bulk of his Property was left away, and there were Declarasions shewing his Idea that his Property would go to his Wife and Children upon a Marriage subsequent to the Will; and the Will itself was such as would involve the Family in endless Litigation. Every Circumstance in that Case raised the Implication, that the Will should be revoked. No such Circumstances exist in this Case; but, on the Contrary, every Circumstance repels the Implication. No. 17. 29 Car. II. c. 3.

"There would be a very considerable Provision for the Wife and her Child; and it must be presumed that he knew the Operation of the Will; that it disposed of the small Legacies according to his Intention; that the Residue would be distributable according to Law; and that his Property would be managed by the respective Persons in whom he had reposed a Confidence for the Purpose.

The Advocates for the Plaintiff having here closed their Arguments, the Judge intimated a Wish, that the Case might be considered upon another Point, viz. Whether the Will (provided it was revoked) did not Revive, as the Son by the second Wife did not survive his Father? For which Purpose, it stood over till the 13th of May; when the Advocates before mentioned, argued on that Point.

"In Cases where it cannot be actually ascertained whether the Parent or the Son survived, and they perished by the same Stroke of Death, according to the Roman Law, it was presumed that if the Son had not attained the Age of Puberty, the Father survived; but if the Son had attained that Age, that he survived the Father. This Presumption arises from the Degree of Strength supposed to belong to the respective Parties. It was liable to certain Exceptions in behalf of Claims favoured by that Law for the Interest of Mothers, and in Cases of fiduciary Bequests, and the Rights of Patronage. The general Rule of Presumption being applied to the present Case, the Child by the second Wife being only about a Year old, must be taken to have died before his Father. The Question then arises, Whether the Will, if it was before revoked, was revived by the Circumstance of the Father surviving?

"By the Roman Law, a Will which was revoked by the Birth of a posthumous Child, did not revive by his Death, because no Change in the Father's Intention can in that Case be presumed; but it was held otherwise with Respect to the *quasi posthumi*, or those who were born after the Will was made in the Testator's Lifetime. On their Death the Will was restored by the Prætorian Law, as upon a new Designation of Intention.

"There is no Case where it has been held by the Law of England, that, under these Circumstances, a presumptive Revocation does take place. There are two Points of Time to be regarded in considering the Effect of the Will: 1st, The Paction: 2d, The Consummation. The Will was undoubtedly good when it was made. Was it otherwise at the Death of the Testator? The Presumption of the Law of England, with Respect to Revocations, is not more strong than the *Agnatio sui hæredis* by the Civil Law, nor so strong, for that was an actual Revocation, and the other is only a Presumption liable to be repelled. The Removal of the Cause will as strongly imply a Renewal of the first Intention, or rather more strongly, on Account of the Omission to destroy the Will; but by the Prætorian Civil Law it was held, that upon the Death of the *Agnatus*, the Will was restored. It is presumed, that the Reason why the Testator did not revoke the Will, was, that he was prevented by Death; but, if the Child dies first, the Presumption is, that, not having revoked the Will, he intended it to stand. At all events, the Testator intended the Legacies, on account of which alone this Dispute is materal, should be carried into Effect, and that the Executors whom he appointed should have the Management of his Property: And if the Court, on a presumed Intent, decides against the Will, the actual Intention of the Testator will be defeated.

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29 Car. II. c. 3.

Dr. Batten and Dr. Swabey *contra.* "Though it may be admitted that the Will was originally good, it is a general Rule that a Will is revoked by Marriage and the Birth of a Child.

"In the present Case there was a total Change in the Testator's Situation, from being a Widower to becoming again a Husband and a Father;—such a total Change as to raise the Presumption that he did not intend the Will to stand. It has been decided by Sir George Hay, that the Cases of a Widower and a Bachelor are the same. There is no Decision that the Quantum of the Property will vary the Presumption. It appears that the Case of Brown and Thompson came on first before Sir John Trevor, Master of the Rolls, who held, that the Will was revoked; and afterwards before Lord Keeper Wright, who was of a different Opinion on account of the particular Circumstances of the Case; and Buller, J. in Doe ex dem. Lancashire v. Lancashire, 5 T. R. 49, 61, thought the Opinion of the Master of the Rolls better than that of the Lord Keeper.

"There are some *dicta* of Lord Mansfield, but they are only *dicta*, in Brady and Cubitt, that the Will is not revoked by Marriage and the Birth of a Child, if it only covers Part of the Property. In Doe v. Lancashire, the Revocation is held to arise from a tacit Condition at the Time of making the Will. There may be some Cases in which a Will is allowed to stand, from Circumstances repelling the Presumption; but nothing is more dangerous than to let a particular Equity, arising from the Quantity of the Effects, operate against a general Rule of Law. It would introduce a vague and uncertain Method of Decision, and it is better to adhere to a known Presumption of Law. The Disposition was complete by the Will, both as to the Real and Personal Estate; and the Testator has not shewn, since the Alteration in his Circumstances, any Intention to adhere to it. Though the Real Estate is not within the Jurisdiction of this Court, it may afford an Argument in favour of the Revocation that it was wholly devised away.

"As to the other Point.—It is not to be taken for granted in this Case, even according to the Principles of the Roman Law, that the Child died first. The Doctrine alluded to goes no further than to shew, that when the Father and Son perish by the same Blow of Death, the Father is supposed to survive his infant Son. But it does not appear that in this Case they did perish by the same Blow of Death. The Ship being cast away is all that is admitted; *non constat* that they *died* by Shipwreck. The general Law is, that the Will was revoked: To take the Case out of that Law, its Revival by the Father's surviving, must be shewn on the other Side. There are Passages in Dr. Zouch which shew, that in testamentary Cases the Presumption of Father or Son surviving, is not adopted.

"By the Roman Law, if a Will was void for the Prætermission of a Child who afterwards died, the Will was not thereby rendered Valid; or, if it was revoked by the Birth of a posthumous Child, the Death of that Child did not restore it; and in Case of a Will becoming void by any subsequent Cause, the Removal of that Cause did not restore it by the Civil Law, though it was otherwise by the Prætorian Law, which was in the Nature of a Court of Equity, and only prevailed for the Sake of the *hæres Scriptus*, or residuary Legatee. In this Case, the residuary Legatee was dead, and the Ground on which the *jus Prætorium* interposed fails. Any particular Legatees only had the Advantage of its Revival incidentally, as it was allowed to stand on account of the general *hæres Scriptus*.

"Suppose this Case were to be decided by the Roman Law, and the Will were to be restored by Survivorship, it could not be restored in the present Instance, for no Alteration in the Father's Intention can be presumed to have taken Place after the Son's Death: and it was only upon such Presumption that after an *Agnatio sui hæredis*, the Will was by the Prætorian Law restored. If the Father did survive a few Minutes, there is no Room to suppose that he had Time to change his Intention. But the Doctrine of Revival is no Part of the Civil Law which has been adopted by the Law of England. There is a Case of Barrow and Baxter decided in this Court; it is mentioned in Ambler 491. From the Register it appears, that the Wife brought no Fortune and had a Settlement; there was a Child who died before the Testator, and yet the Will was held to be revoked. As a Matter of general Learning, the Roman Law is not adopted in these Cases by the Law of England, for they essentially differ from each other in many Respects.

"Sir William Scott and Dr. Nicholl in Reply.—The Civil Law, upon the Grounds which have been already urged, is clearly in Favour of the Will; and the Court will not attend to Distinctions between *jus Prætorium* and *jus Civile*. *Jus Prætorium* was as much a Part of the general System as any other, and in Fact it was the predominating and over-ruling Authority. No. 17. 29 Car. II c. 3.

"The Case of Barrow and Baxter is certainly contrary to the Civil Law; and it does not appear if those Points were adduced, which in this Cause have been urged in Support of the Will.

"With regard to the Distinction which has been made between the *hæres Scriptus* and a special Legatee, the latter was as much intended to be benefited as the former.

"It being the established Law that the Death of a *Quasi Posthumus* revives the Will, the Distance of the Interval between his Death and that of the Testator is not material against the Presumption of Law. The Court is not to examine by Evidence whether there was an actual Change of Intention or not.

"The Law, with Respect to Revocations by Marriage and the Birth of a Child, is, as laid down in Brady and Cubitt, a mere Principle of Presumption; and, in that Case, all the Circumstances must be taken together, and the State of the Property may be very material. It is extraordinary if there is any Decision that a Paper disposing of small Legacies will be revoked by subsequent Marriage, &c. that no such Case appears. The Courts have not gone the Length of Lord Mansfield in Brady and Cubitt, by deciding that a Revocation does not take place if any Property is left: But there is no Case where Marriage and the Birth of a Child have been held to amount to a Revocation, if the Will was such as might have been made after these Relations were contracted, fairly and without Injury to the Family.

"The Disposition in the Will in Question only extends to a very small Part of the Property, and might be fairly made by a Person having a Family, the lapsed residuary Bequest being as if it had never existed.

"The Testator having no Wife or Children at his Death, the tacit Condition (which in Doe and Lancashire is considered as the Principle of these Cases) may be fairly considered as a Condition that the Will should not take Effect if the Testator should afterwards have a Wife and Children *who survived* him.

"All the Cases in the Courts of Common Law admit, that the Doctrine upon this Subject is borrowed from the Civil Law. The Courts have not adopted all the minute Rules and Distinctions, but only some of the general Principles; and there is no Principle better founded on Justice, than that if a Will is revoked by the Birth of a Child, it is revived by his Death in the Life of the Father.

"Judgment of the Court.

"Sir William Wynne.—It is contended on the Part of the Next of Kin, that by Marriage and the Birth of a Child the Will became void by Implication of Law: On the other Side it is contended, that the particular Circumstances of the Case rebut that Implication.

"It is clearly the general Law, that a Will made by a Bachelor is revoked by subsequent Marriage and the Birth of a Child. That there is a Distinction in the Case mentioned by Ambler is, I think, a Mistake. The Principle of the Rule is, that the Change of Circumstances found a Presumption that there is a Change in Intention, which may be as strong in Favour of a second Wife and Family as a first; and it does not seem Material whether the Will was made by a Widower having Children, or a Bachelor.

"The more weighty Argument is drawn from the Operation of the Will, under the Circumstances which have happened. The Testator has given Legacies which are not very considerable, and the Residue to his Wife. That Gift of the Residue became void by her Death. If he had left a second Wife and Son, they would have had their Share with the other Children. In Brady and Cubitt it is said by Lord Mansfield, that there is no Case of a Revocation where there is not a total Disposition, intimating that the Ground of Revocation is an entire Deprivation. However that may be, if there is an ample Portion remaining after a few Legacies to Friends, there is no Decision that a Will would be revoked. The Principle on which the Cases have gone does not militate against such a Will.

No. 17.
29 Car. II. c. 3.

"This Case is not exactly similar: The Testator gave the Bulk of his Property to his Wife early after Marriage. She lived for several Years, during which all their Children were born. The Birth of those Children would not revoke the Will, and he might mean to leave them in the Power of their Mother. She died; and it is not an improbable Supposition, that he, knowing the Effect of the Will, suffered it to remain. There is a strong Ground, then, to contend, that, under those Circumstances, the Case does not fall within the Rule laid down and established for the Revocation of Wills.

"I was not aware of the Case of Barrow and Baxter, in which the Court seems to think the subsequent Death of the Child would not make an Alteration; but the Point seems a good deal like that which has been *vexata quæstio* in these Courts, and brought before the Courts of Common Law, whether a Will, which is revoked by another, is set up by the Destruction of the Second. There was a Case to that Effect before Sir Geo. Lee, of Hellyar and Hellyar, in which it was held, that the Will being once revoked remained so. There was an Appeal to the Delegates, but it was never determined by them. The Case of Glazier and Glazier, 4 Bur. 2512, was directly contrary to that; and it was held that the first Will was good.

"In Brady v. Cubitt, it was laid down by Buller, J. that implied Revocations must depend on the Circumstances *at the Time of the Testator's Death*: That makes it material to inquire what those Circumstances were. The Fact is, that having embarked, they all perished. The Roman Law has been entered into, and it clearly appears by the Prætorian, which is considered as the latter Roman Law, that the Revocation was entire and not presumptive, and yet the Will was held to revive.

"With Respect to the Priority of Death, it has always appeared to me more fair and reasonable in these unhappy Cases, to consider all the Parties as dying at the same Instant of Time, than to resort to any fanciful Supposition of Survivorship on Account of the Degrees of Robustness; and I rather suppose that is what is meant by Dr. Zouch in the Passages alluded to.

"Then the Testator, at the Time of his Death, had neither Wife or Children. Buller, J. says, It is to depend on the Circumstances *at the Time of the Testator's Death*: There is no Circumstance to raise a Presumption that he intended at that Time that the Will should be revoked.

"On the first Point I should have great Doubt if the presumed Revocation did take place at all.

"On the second, As there were neither Wife or Children at the Death of the Testator, I am clearly of Opinion, that the Court ought to pronounce for the Validity of the Will."

As to parol Declarations, &c. concerning the Subsistence or Revocation of the Will, vide Brady v. Cubitt, and Doe v. Lancashire, ubi sup.

No. 18.

4 William & Mary, c. 16.—An Act to prevent Frauds by Clandestine Mortgages.

4 W. & M. c. 16.

'WHEREAS great Frauds and Deceits are too often practised by 'necessitous and evil disposed Persons in borrowing of Money, 'and giving Judgements, Statutes, and Recognizances privately, for 'securing the Repayment of the said Money, and the same Persons 'do afterwards borrow Money upon Security of their Lands of other 'Persons, and do not acquaint the latter Lender thereof with the 'same, whereby such late Lender is very often in Danger to lose his 'whole Money, or forced to pay off the Debts secured by the said 'Judgements, Statutes, and Recognizances, before they can have any 'Benefit of the said Mortgages: And whereas divers Persons do 'many Times mortgage their Lands more than once, without giving 'Notice of their First Mortgage, whereby Lenders of Money upon 'Second, or after Mortgages, do often lose their Money, and are put

'to great Charges in Suits and otherwise:' For Remedy whereof, and 'preventing the same as much as may be for the future, No. 18. 4 W. & M c 16.

II. Be it enacted by the King's and Queen's most Excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That if any Person or Persons, from and after the First Day of *May*, which shall be in the Year of our Lord One Thousand Six Hundred Ninety and Three, shall borrow any Money, or for any other valuable Consideration, for Payment thereof, voluntarily give, acknowledge, permit, or suffer to be entered, against him or them, One or more Judgement or Judgements, Statute or Statutes, Recognizance or Recognizances, to any Person or Persons, Creditor or Creditors; and if the said Borrower or Borrowers, Debtor or Debtors, shall afterwards take up or borrow any other Sum or Sums of Money of any other Person or Persons, or for other valuable Consideration become indebted to such Person or Persons, and for securing the Repayment and Discharge thereof, shall mortgage his, her, or their Lands or Tenements, or any Part thereof, to the said Second or other Lender or Lenders of the said Money, Creditor or Creditors, or to any other Person or Persons in Trust for, or to the Use of, such Second or other Lender or Lenders, Creditor or Creditors, and shall not give Notice to the said Mortgagee or Mortgagees of the said Judgement or Judgements, Statute or Statutes, Recognizance or Recognizances, in Writing under his, her, or their Hand or Hands, before the Execution of the said Mortgage or Mortgages; unless such Mortgager or Mortgagers, his, her, or their Heirs, upon Notice to him, her, or them, given by the Mortgagee or Mortgagees of the said Lands and Tenements, his, her, or their Heirs, Executors, Administers, or Assigns, in Writing under his, her, or their Hands and Seals, attested by Two or more sufficient Witnesses, of any such former Judgement or Judgements, Statute or Statutes, Recognizance or Recognizances, shall, within Six Months, pay off and discharge the said Judgement or Judgements, Statute or Statutes, Recognizance or Recognizances, and all Interest and Charges due thereupon, and cause or procure the same to be vacated or discharged by Record; that then the Mortgager or Mortgagers of the said Lands and Tenements, his, her, or their Heirs, Executors, Administrators, or Assigns, shall have no Benefit or Remedy against the said Mortgagee or Mortgagees, his, her, or their Heirs, Executors, Administrators, or Assigns, or any of them, in Equity or elsewhere, for Redemption of the said Lands and Tenements, or any Part thereof; but the said Mortgagee or Mortgagees, his, her, or their Heirs, Executors, Administrators, and Assigns, shall and may hold and enjoy the said Lands and Tenements for such Estate and Term therein, as were or was granted and settled to the said Mortagee or Mortgagees, against the said Mortgager or Mortgagers, and all Person and Persons lawfully claiming from, by, or under him, her, or them, freed from Equity of Redemption, and as fully, to all Intents and Purposes whatsoever, as if the same had been purchased absolutely and without any Power or Liberty of Redemption.

Debtor, upon Judgment, &c. taking up Money of another upon a Mortgage, without Notice of the Judgment to the Mortgagee, shall lose his Equity to redeem.

III. And be it further enacted by the Authority aforesaid, That if any Person or Persons who have or hath Once mortgaged, or, from and after the said First Day of *May*, shall mortgage, any Lands or Tenements, to any Person or Persons, for Security of Money lent, or otherwise accrued or become due, or for other valuable Considerations; and if the said Mortgager or Mortgagers shall again mortgage the same Lands or Tenements, or any Part thereof, to any other Person or Persons for valuable Considerations, (the said former Mortgage being in Force and not discharged), and shall not discover to the

Person mortgaging Twice without Notice of the First Mortgage, loses his Equity. 2 Vern. 589, 590.

No. 18.
4 W. & M. c. 16.

said Second or other Mortgagee or Mortgagees, or some or One of them, the former Mortgage or Mortgages, in Writing under his or their Hands, that then, and in those Cases also, the said Mortgager or Mortgagers, his, her, or their Heirs, Executors, Administrators, or Assigns, shall have no Relief or Equity of Redemption against the Second or after Mortgagee or Mortgagees, his, her, or their Heirs, Executors, Administrators, or Assigns, upon the said after Mortgage or Mortgages, but that such Mortgagee or Mortgagees, his, her, or their Heirs, Executors, Administrators, and Assigns, shall and may hold and enjoy such more than Once mortgaged Lands and Tenements, for such Estate and Term therein, as were or was granted and conveyed by the said Mortgager or Mortgagers, against him, her, or them, his, her, or their Heirs, Executors, or Administrators respectively, freed from Equity of Redemption, and as fully, to all Intents and Purposes, as if the same had been an absolute Purchase, and without any Power or Liberty of Redemption.

Under Mortgagees may redeem.

IV. Provided always, and be it further enacted by the Authority aforesaid, That nevertheless, if it so happen there be more than One Mortgage at the same Time made by any Person or Persons, to any Person or Persons, of the same Lands and Tenements, the several late or under Mortgagees, his, her, or their Heirs, Executors, Administrators, or Assigns, shall have Power to redeem any former Mortgage or Mortgages, upon Payment of the Principal Debt, Interest, and Costs of Suit, to the prior Mortgagee or Mortgagees, his, her, or their Heirs, Executors, Administrators, or Assigns, any Thing herein contained to the contrary thereof in any wise notwithstanding.

Dower saved.

V. Provided always, That Nothing in this Act contained shall be construed, deemed, or extended to bar any Widow of any Mortgager of Lands or Tenements from her Dower and Right in or to the said Lands, who did not legally join with her Husband in such Mortgage, or otherwise lawfully bar or exclude herself from such her Dower or Right.

No. 19.

5 William & Mary, c. 6.—An Act to prevent Disputes and Controversies concerning Royal Mines.

5 W. & M. c. 6
1 W. & M. Ses. 1. c. 30.

'WHEREAS by a Clause in One Act of Parliament, made in 'the First Year of Their Majesties' Reign, intituled, *An Act* '*to repeal the Statute made in the Fifth Year of King* HENRY *the* '*Fourth against the multiplying of Gold and Silver*, it is amongst 'other Things enacted, That no Mine of Tin, Copper, Iron, or 'Lead, shall hereafter be adjudged, reputed or taken to be a Royal 'Mine, although Gold or Silver may be extracted out of the same: 'But notwithstanding the good Provision by the said Statute to 'prevent the discouraging Their Majesties' good Subjects, who have 'Mines of Copper, Tin, Iron, or Lead in their Soils, from digging 'and opening the same, many Doubts and Questions have arisen 'upon the said Statute, whereby great Suits and Troubles have arisen 'to many Owners and Proprietors of such Mines;' wherefore, for the better Explanation of the said Statute,

Owners of Mines shall enjoy them.

II. Be it enacted and declared by the King's and Queen's most Excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That all and every Person or Persons, being Subjects of the Crown of *England*, Bodies

Politick or Corporate, that now are or hereafter shall be the Owner or Owners, Proprietor or Proprietors of any Mine or Mines within the Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick-upon-Tweed*, wherein any Ore now is, or hereafter shall be discovered, opened, found, or wrought, and in which there is Copper, Tin, Iron, or Lead, shall and may hold and enjoy the same Mine or Mines and Ore, and continue in the Possession thereof, and dig and work the said Mine or Mines or Ore, notwithstanding that such Mine or Mines or Ore shall be pretended or claimed to be a Royal Mine or Royal Mines; any Law, Usage, or Custom to the contrary notwithstanding. No. 19. 5 W. & M. c. 6.

III. Provided always, and be it enacted and declared, That Their Majesties, Their Heirs and Successors, and all claiming any Royal Mines under them, shall and may have the Ore of any such Mine or Mines in any Part of the said Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick-upon-Tweed*, (other than Tin Ore in the Counties of *Devon* and *Cornwall*,) paying to the Proprietors or Owners of the said Mine or Mines wherein such Ore is or shall be found, within Thirty Days after the said Ore is or shall be raised and laid upon the Banks of the said Mine or Mines, and before the same be removed from thence, the Rates following (that is to say), For all Ore washt, made clean, and merchantable, wherein is Copper, the Rate of Sixteen Pounds *per* Ton; and for all Ore washt, made clean, and merchantable, wherein there is Tin, the Rate of Forty Shillings *per* Ton; and for all Ore washt, made clean, and merchantable, wherein there is Iron, the Rate of Forty Shillings *per* Ton; and for all Ore washt, made clean, and merchantable, where there is Lead, the Rate of Nine Pounds *per* Ton. And in Default of Payment of such respective Sums as aforesaid, it shall and may be lawful for the Owners and Proprietors of the said Mine or Mines, wherein such Ore is, are, or shall be found, to sell and dispose of the said Ore to his and their own Uses; any Law, Statute or Custom to the contrary notwithstanding. The King may have the Ore on the Rates following.

IV. Provided always, That Nothing contained in this Act shall alter, determine, or make void the Charters granted to the Tinners of *Devon* and *Cornwall*, by any of the Kings and Queens of this Realm, or any of the Liberties, Privileges, or Franchises of the said Tinners, or to alter, determine, or make void the Laws, Customs, or Constitutions of the Stannaries of *Devon* or *Cornwall*, or any of them. The Tinners Charters, &c. saved.

No. 20.

11 William III. c. 6.—An Act to enable his Majesty's natural-born Subjects to inherit the Estate of their Ancestors, either lineal or collateral, notwithstanding their Father or Mother were Aliens.

'WHEREAS divers Persons, born within the King's Dominions, 'are disabled to inherit and make their Titles by Descent from 'their Ancestors, by Reason that their Fathers or Mothers, or some 'other Ancestor (by whom they are to derive their Descent) was an 'Alien, and not born within the King's Dominions:' For Remedy whereof, Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all and every Person or Persons, being the King's natural-born Subject or Subjects within any of the King's 11 W. III. c. 6. King's natural-born Subjects shall inherit as Heirs,

No. 20.
11 W. III c. 6.

Realms or Dominions, shall and may hereafter lawfully inherit and be inheritable as Heir or Heirs to any Honours, Manors, Lands, Tenements or Hereditaments, and make their Pedigrees and Titles by Descent from any of their Ancestors lineal or collateral, although the Father and Mother, or Fathers or Mothers, or other Ancestor of such Person or Persons, by, from, through, or under whom he, she, or they shall or may make or derive their Title or Pedigree, were or was, or is or are, or shall be born out of the King's Allegiance, and out of his Majesty's Realms and Dominions, as freely, fully, and effectually, to all Intents and Purposes, as if such Father or Mother, or Fathers or Mothers, or other Ancestor or Ancestors, by, from, through or under whom he, she, or they shall or may make or derive their Title or Pedigree, had been naturalized, or natural-born Subject, or Subjects within the King's Dominions; any Law or Custom to the contrary notwithstanding.

though their Parents were born out of the King's Dominions, &c.

No. 21.

25 George II. c. 39.—An Act to obviate Doubts that may arise upon an Act made and passed in the eleventh and twelfth Years of the Reign of his late Majesty King William the Third, intituled, *An Act to enable his Majesty's natural-born Subjects to inherit the Estate of their Ancestors, either lineal or collateral, notwithstanding their Father or Mother were Aliens.*

25 Geo. II. c. 39.
11 & 12 W. III. c. 6.

'WHEREAS in and by an Act of Parliament made and passed 'in the eleventh and twelfth Years of the Reign of his late 'Majesty King William the Third, intituled, *An Act to enable his 'Majesty's natural-born Subjects to inherit the Estate of their Ances-'tors, either lineal or collateral, notwithstanding their Father or 'Mother were Aliens*; It is enacted, That all and every Person or 'Persons, being the King's natural-born Subject or Subjects, within 'any of the King's Realms or Dominions, should and might there-'after lawfully inherit and be inheritable, as Heir or Heirs, to any 'Honors, Manors, Lands, Tenements or Hereditaments, and make 'their Pedigrees and Titles by Descent from any of their Ancestors, 'lineal or collateral, although the Father and Mother, or Fathers or 'Mothers, or other Ancestor of such Person or Persons by, from, 'through, or under whom he, she or they should or might make or 'derive their Title or Pedigree, were or was, or should be born out of 'the King's Allegiance, and out of his Majesty's Realms and Do-'minions, as freely, fully and effectually, to all Intents and Purposes, 'as if such Father or Mother, or Fathers or Mothers, or other 'Ancestor or Ancestors by, from, through, or under whom he, she 'or they should or might make or derive their Title or Pedigree, had 'been naturalized or natural-born Subjects: And whereas many 'Doubts and Inconveniences may arise upon the said recited Act, 'in case of Persons gaining Capacities to inherit and derive their 'Pedigrees by virtue of the said recited Act, after the Deaths of their 'Ancestors to whom they claim to be Heirs, whereby Estates well 'vested by Descent, Mortgages, Purchases, and Settlements duly 'made, may be defeated:' For Remedy whereof be it enacted and declared by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the

same, That the said Statute shall not extend, or be deemed, taken, or construed to extend to give any Right or Title to any Person or Persons to inherit as Heir or Heirs, or Coheir or Coheirs, to any Person dying seized of any Manors, Lands, Tenements or Hereditaments, in Possession, Reversion or Remainder, by enabling any such Person or Persons to claim or derive his, her or their Pedigree through any Alien Ancestor or Ancestors, unless the Person or Persons so claiming or deriving his, her or their Title as Heir or Heirs, Coheir or Coheirs, was or were, or shall be in being, and capable to take the same Estate as Heir or Heirs, Coheir or Coheirs, by Virtue of the said Statute, at the Death of the Person who shall so last die seised of such Manors, Lands, Tenements or Hereditaments, and to whom he, she or they shall so claim to be Heir or Heirs, Coheir or Coheirs, by Force of the said Statute.

No. 21. 25 Geo. II. c. 39. None to inherit but such as shall be in Being, at the Death of the Ancestor who shall die seised,

II. Provided always, and be it enacted by the Authority aforesaid, That in case the Person or Persons who shall be in being, and capable to take at the Death of the Ancestor so dying seized of any such Honours, Manors, Lands, Tenements or Hereditaments, and upon whom the Descent shall be cast by virtue of this Act, or of the said recited Act, shall happen to be a Daughter or Daughters of an Alien, and that the Alien Father or Mother, through whom such Descent shall be derived by such Daughter or Daughters, shall afterwards have a Son born within any of his Majesty's Realms or Dominions; the Descent so cast upon such Daughter or Daughters shall be diveated in favour of such Son; and such Son shall inherit and take the Estate in like Manner as is allowed by the Common Law of this Realm in Cases of the Birth of a nearer Heir; or in case such Father or Mother shall have no Son or Sons, but shall have one or more Daughter or Daughters afterwards born within any of his Majesty's Realms or Dominions, the Daughter or Daughters so born afterwards shall inherit and take in Coparcenary with the Daughter or Daughters upon whom the Descent shall be cast at the Death of the Ancestor last seised; any Thing in this Act contained to the contrary in any wise notwithstanding.

If the Descent shall be cast upon a Daughter, and the Alien Father, &c. shall afterwards have a Son, the Daughter to be divested, &c.

No. 22.

10 & 11 William III. c. 16.—An Act to enable posthumous Children to take Estates as if born in their Fathers Life-time.

'WHEREAS it often happens, that by Marriage and other 'Settlements, Estates are limited in Remainder to the Use of 'the Sons and Daughters, the Issue of such Marriage, with Remainders over, without limiting an Estate to Trustees to preserve the 'contingent Remainders limited to such Sons and Daughters, by 'which Means such Sons and Daughters, if they happen to be born 'after the Decease of their Father, are in Danger to be defeated of 'their Remainder by the next in Remainder after them, and left unprovided for by such Settlements, contrary to the Intent of the 'Parties that made those Settlements;' Be it enacted by the King's most Excellent Majesty, and by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this Parliament assembled, and by the Authority of the same, That where any Estate

10 & 11 W. III. c. 16.

No. 22.
10 & 11 W. III. c. 16.
Vin. V 18 408.
Estates limited in Remainder to the lawful Issue of the Body of any Person, Son or Daughter born after the Decease of the Father may take such Estate as if born in his Lifetime, &c although there be no Limitation to Trustees, &c.

already is or shall hereafter, by any Marriage or other Settlement, (1) be limited in Remainder to, or to the Use of the first or other Son or Sons of the Body of any Person lawfully begotten, with any Remainder or Remainders over to, or to the Use of any other Person or Persons, or in Remainder to, or to the Use of a Daughter or Daughters lawfully begotten, with any Remainder or Remainders to any other Person or Persons, that any Son or Sons, or Daughter or Daughters of such Person or Persons lawfully begotton or to be begotton, that shall be born after the Decease of his, her, or their Father, shall and may, by Virtue of such Settlement, take such Estate so limited to the first and other Sons, or to the Daughter or Daughters, in the same Manner, as if born in the Life-time of his, her, or their Father, although there shall happen no Estate to be limited to Trustees, after the Decease of the Father, to preserve the contingent Remainder to such afterborn Son or Sons, Daughter or Daughters, until he, she or they come *in esse*, or are born, to take the same; any Law or Usage to the contrary in any wise notwithstanding.

II. Provided always, That Nothing in this Act shall extend, or be construed to extend, to divest any Estate in Remainder, that by Virtue of any Marriage or other Settlement, is already come to the Possession of any Person or Persons, or to whom any Right is accrued, though not in actual Possession, by Reason or Means of any afterborn Son or Sons, or Daughter or Daughters not happening to be born in the Lifetime of his, her or their Father.

(1) In Reeve v. Long, Salk. 227, 3 Lev. 408, Skin. 430, Pasc 6 W. and M. it was ruled, that a contingent Remainder, limited *by Will*, became void by the Death of a Tenant for Life before the Birth of his Son intitled to the Remainder; but the Judgment was reversed by the House of Lords, contrary to the Opinion of all the Judges. In the Report in Salk. a Doubt is expressed, whether this Statute extends to a Devise, and I am not aware that there is any express Decision that the Statute extends to Wills; but in Roe v. Quartley, 1 T. R. 634, the Court seems to take it for granted that it does. Mr. Butler, in a Note to Co. Lit. pa. 298, says, "There is a Tradition, that as the Case of Reeve v. Long arose upon a Will, the Lords considered the Question to be settled by their Determination in that Case, and were unwilling to make any *express Mention* of Limitations or Devises made in Wills, lest it should appear to call in Question the Authority or Propriety of their Determination. Besides, (he observes,) the Words of the Act may be construed, without much Violence, to comprize Settlements of Estates made by Will, as well as Settlements of Estates made by Deed." In Bull. N. P. pa. 105, it is also said, that there is no Ground for the Distinction.

No. 23.

4 Anne, c. 16.—An Act for the Amendment of the Law, and the better Advancement of Justice.*

4 Anne, c 16.

By 9 Anne, c. 20 sect 7. This Statute is extended to Writs of Mandamus and Informations in Nature of Quo Warranto.

FOR the Amendment of the Law in several Particulars, and for the easier, speedier, and better Advancement of Justice, Be it enacted by the Queen's most Excellent Majesty, by and with the

* The following Account of this Act is taken from Burnet's History of his own Times:—"The Lord Sommers made a Motion in the House of Lords to correct some of the Proceedings in the Common Law and in Chancery, that were both dilatory and very changeable. He began the Motion with some Instances that were more conspicuous and gross, and he managed the Matter so, that both the Lord Keeper and Judges concurred with him, though it passes generally for a Maxim, that Judges ought rather to enlarge than contract their Jurisdiction. A Bill passed the House that began a Reformation of Proceedings at law, which, as Things now stand, are certainly amongst the

Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the first Day of *Trinity* Term which shall be in the Year of our Lord One Thousand Seven Hundred and Six, where any Demurrer shall be joined, and entered in any Action or Suit in any Court of Record within this Realm, the Judges shall proceed and give Judgment, according as the very Right of the Cause and Matter in Law shall appear unto them, without regarding any Imperfection, Omission, or Defect in any Writ, Return, Plaint, Declaration, or other Pleading, Process, or Course of Proceeding whatsoever, except those only which the Party demurring shall specially and particularly set down and express, together with his Demurrer, as Causes of the same, notwithstanding that such Imperfection, Omission, or Defect might have heretofore been taken to be Matter of Substance, and not aided by the Statute made in the twenty-seventh Year of Queen ELIZABETH, intituled, *An Act for the Furtherance of Justice in case of Demurrer and Pleadings*, so as sufficient Matter appear in the said Pleadings, upon which the Court may give Judgment according to the very Right of the Cause, (1) and therefore from and after the said first Day of *Trinity* Term, no Advantage or Exception shall be taken of or for an immaterial Traverse; or of or for the Default of entering Pledges upon any Bill or Declaration; or of or for the Default of alledging the bringing into Court any Bond, Bill, Indenture, or other Deed whatsoever mentioned in the Declaration or other Pleading; or of or for the Default of alledging of the bringing into Court Letters Testamentary, or Letters of Administration; or of or for the Omission of *Vi & Armis & contra pacem*, or either of them; or of or for the Want of Averment of *Hoc paratus est verificare*, or, *Hoc paratus est verificare per Recordum*; or of or for not alledging *prout patet per Recordum*; but the Court shall give Judgment according to the very Right of the Cause as aforesaid, without regarding any such Imperfections, Omissions, and Defects, or any other Matter of like Nature, except the same shall be specially and particularly set down and shewn for Cause of Demurrer.

No. 23. 4 Anne, c. 16.

Judges shall give Judgment on Demurrer, &c. without regarding any Defect in Writ, &c.

Exception. 27 Eliz. c. 5.

II. And be it further enacted by the Authority aforesaid, That from and after the said first Day of *Trinity* Term, all the Statutes of Jeofails shall be extended to Judgments which shall at any Time afterwards be entered upon Confession, *Nihil dicit*, or *Non sum informatus*, in any Court of Record; and no such Judgment shall be reversed, nor any Judgment upon any Writ of Enquiry of Damages

Statutes of Jeofails extended to Judgments on Nihil dicit, &c.

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greatest Grievances of the Nation. When it went through the House of Commons, it was visible, that the Interest of Under-Officers, Clerks, and Attorneys, whose Gains were to be lessened by this Bill, was more considered than the Interest of the Nation itself. Several Clauses, how beneficial soever to the Subject, which touched on their Profits, were left out by the Commons. But what Fault soever the Lords might have found with these Alterations, yet, to avoid all Disputes with the Commons, they agreed to their Amendments."

A principal Motive to the engaging in the present Work was the Removal of any Prejudice against the Alteration of the Law, in Consequence of the inconvenient Magnitude which the Statutes have already attained. In various Parts of the Work, such Alterations are suggested as appeared to be of a Beneficial Nature, and, as the Title of the present Number must be repeated in Part 8, I propose to avail myself of that Opportunity of introducing such Observations as may appear to be material, with Respect to any Alterations in the Proceedings of Courts of Law.

As the Act, of which the Contents are very miscellaneous, contains some important Provisions respecting Real Estates, it is inserted in this Place in Conformity with the general Principle stated in the introductory Note to the Statute of Frauds.

(1) See this Statute and Notes, post Part 4, Class No.

No. 23. 4 Anne, c. 16. executed thereon be staid or reversed, for or by Reason of any Imperfection, Omission, Defect, Matter, or Thing whatsoever, which would have been aided and cured by any of the said Statutes of Jeofails (2) in case a Verdict of twelve Men had been given in the said Action or Suit, so as there be an original Writ or Bill, and Warrants of Attorney duly filed according to the Law as is now used.

When Warrants of Attorney shall be filed.

III. Provided always, and be it enacted by the Authority aforesaid, That the Attorney for the Plaintiff, or Demandant in any Action or Suit, shall file his Warrant of Attorney with the proper Officer of the Court where the Cause is depending the same Term he declares; and the Attorney for the Defendant or Tenant shall file his Warrant of Attorney as aforesaid, the same Term he appears, under the Penalties inflicted upon Attornies by any former Law for Default of filing their Warrants of Attorney.

Defendant, &c. may plead several Matters.
Not extend to qui tam Actions. 2 Wils. 21.

IV. And be it further enacted by the Authority aforesaid, That from and after the said first Day of *Trinity* Term it shall and may be lawful for any Defendant or Tenant in any Action or Suit, or for any Plaintiff in Replevin, in any Court of Record, with the Leave of the same Court (3) to plead as many several Matters thereto, as he shall think necessary for his Defence.

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(2) Defects which are cured by Verdict at Common Law are not aided by this Statute. The Presumption from the Verdict in such Case is, that the Fact which was omitted, or imperfectly alleged, must have been proved, in Order to have obtained the Verdict.—See the Cases founded on this Distinction, in Williams' Note to Stennel v. Hogg, 1 Saund. 228.—See also Note to Crowther v. Oldfield, 1 Salk. 364, 6th Edit.

(3) The omitting to state, that the second and subsequent Pleas are pleaded by Order of the Court, although informal, is no Cause of Demurrer.—Andr. 108—1 Wils. 219—Cowp. 500. If Leave has not been regularly obtained, the proper Course is either to sign Judgment or to apply to the Court to strike out one of the Pleas.—Tidd's Prac. 4th Edit. 605—1 Bos. and Pul. 415—1 Chitt. Plead. 452. The Courts will not allow *non assumpsit* or *non est factum* to be pleaded with a Plea of Tender, which necessarily admits a Right of Action. The Court of C. B. refused to admit Pleas of general Issue and the Stock-jobbing Act, as the Defence under that Act might have been given in Evidence under the general Issue.—1 Bos. & Pul. 222—or non assumpsit and alien Enemy.—Id. & 2 B. & P. 72. This last decision was manifestly founded upon very correct Principles—the one Plea amounting to an absolute Bar, the other only to a temporary Disability. A Plea to be tried by a Jury cannot be joined with *ne unques accouple*, which is to be tried by the Bishop—Harding v. Harding, Com. Rep. 148. A Defendant cannot plead double at the Suit of the Crown, without Leave of the Attorney-General.—Willes, 533—Forrest's Exch. 57. It is the Prerogative of the Crown to give two Answers to a Plea, Replication, or any subsequent Proceeding, of which see an Instance, Rex. v. Parry, 14 East. 549.

The supposed Inconsistency of two Pleas, as not guilty and a justification, is not unfrequently the topic of a little common place Eloquence at Nisi Prius; but translating the legal Phraseology into common Language is no more than saying, *Prove I did it, and then I'll prove that I had a Right to do it*; and certainly the Defence of *non feci, si feci, recte feci*, does not owe its origin to the Act for the Amendment of the Law. The Necessity of applying for the Leave of the Court does put some little Restraint upon an Abuse of the Privilege, in the Court of Common Pleas, where an Application must be made by a Motion for a Rule to shew Cause, but even there the Restraint is very limited, and is only exercised in such Instances as have been specified—and the real practical Effect of the Requisition to apply for such Relief is only an Addition to the Expence. If the apparent Object of the Statute had been attended to, a very salutary Use might have been made of this Restraint, by putting Defendants under Terms of making proper Admissions, so as to prevent the Expence of proving Facts which are no Part of the Matter in Dispute. In a former Publication, I was induced to make the following Observations, which have some Relation to this Subject—Appendix to Pothier, 226. "In the Case of Webb v. Fox, 7 T. R. 391, to an Action of Trover, the De-

V. Provided nevertheless, That if any such Matter shall, upon a Demurrer joined, be judged insufficient, Costs shall be given at the Discretion of the Court; (4) or if a Verdict shall be found upon any Issue in the said Cause for the Plaintiff or Demandant, Costs (5) shall be also given in like Manner, unless the Judge, who tried the said Issue, shall certify, (6) that the said Defendant, or Tenant, or Plaintiff in Replevin, had a probable Cause to plead such Matter which upon the said Issue shall be found against him. (7)

No. 23.
4 Anne. c. 16.
Proviso touching Costs.
See 2 Bur. 754

fendant pleaded the general Issue, and also that the Plaintiff was a Bankrupt. Upon a Demurrer to the latter Plea, Lord Kenyon said, he could not commend the Mode in which the Question was brought before the Court, since the whole of the Case might be gone into upon the general Issue; whereas the Defendants, in Addition to the Plea of not guilty, pleaded a special Plea, [which he said, would have been bad upon special Demurrer, as amounting to the general Issue,] and which would be attended with additional Expence to the Parties.—Now it is clear, that in Case the Court had decided in Favour of the Plea, much Expence would have been saved, because the Allegations of the Parties in the first Instance, would have brought the Point before the Court in as perfect a State as it could have been brought, by the great additional Expence of a Trial, and a special Case. I remember his Lordship expressing his Disapprobation of the two Pleas, with more Severity of Manner than appears by the Report. The Question which I recollect his having asked,—Why, if the special Plea was preferred, was the general Issue added? might have received the very easy Answer that, although the Defendant might expect, by the special Plea, to obtain a cheap and early Decision of the Cause, it would not have been judicious to have therefore abandoned every other Ground of Defence."

Notwithstanding the Advantage, which in many Respects arises from the Opportunity of going into the whole Case on the general Issue, there is a great Inconvenience in subjecting Parties, whose only Difference is with Respect to the legal Effect of certain undisputed Facts, to go through the Expence of a Trial, in Order to state those Facts judicially to the Court—but upon this Subject, I shall take an Opportunity of submitting some Observations in another Place.

(4) It is only the Quantum of the Costs which is in the Discretion of the Court, and not the Question whether any Costs shall be allowed.—Duberley v. Page, 2 T. R. 391.

(5) An Avowant is a Plaintiff within this Section.—Dodd v. Joddrell, 2 T. R. 235. A Defendant in Replevin is subject to Costs upon Avowries not supported.—Stone v. Forsyth, Doug. 709, Note.—See Vollum v. Simpson. 2 B. & P. 368, infra Note 7.

(6) The Certificate need not be made in Court, and may be granted after the Plaintiff's Application for Costs.—Cremer v. Dent, Barnes, 141. In Duberley v. Page, mentioned No. 4, supra. Buller, J. said, he had never known any Instance of a Judge, at Nisi Prius, certifying in Favour of the Party pleading double, when the Issues were found against him.

(7) The Effect of this Clause is only to give the Costs of the particular Pleadings, when the general Judgment is in Favour of the Defendant. If all the Issues are found for the Plaintiff, and the Judge certifies under the Statute 43 Eliz. the Plaintiff is entitled to no more Costs than Damages. If after Judgment for the Plaintiff upon Demurrer as to one Plea, the Defendant obtains a Verdict upon the other, the Plaintiff is entitled to the Costs of the Demurrer.—Duberley v. Page, supra Note 5. Where upon *not guilty*, and *not guilty within six Years*, the Defendant had Judgment on Demurrer as to the second, and the Plaintiff afterwards proceeded to Trial and had a Verdict on the first, the Defendant had Costs on the Demurrer, and no Costs of the Trial were allowed on either side.—Cooke v. Sayer, 2 Bur. 753.

In Vivian v. Blake, 11 East, 263, the Defendant, to an Action of Trespass on the Plaintiff's Fishery, pleaded the general Issue, and that the locus in quo was a public Harbour, where all the King's Subjects had a Right to fish, the Replication prescribed for a free Fishery, which was negatived by the Rejoinder. The Verdict being found for the Plaintiff on the general Issue, and for the Defendant upon the special Pleading, it was ruled, that as the

No. 23.
4 Anne, c. 16.

Venire facias how to be awarded.

'VI. And whereas great Delays do frequently happen in Trials, 'by Reason of Challenges to the Arrays of Panels of Jurors, and to 'the Polls, for Default of Hundredors:' For Prevention thereof for the future, be it enacted by the Authority aforesaid, That from and after the said first Day of *Trinity* Term, every *Venire facias* for the Trial of any Issue, in any Action or Suit in any of her Majesty's Courts of Record at *Westminster*, shall be awarded of the Body of the proper County where such Issue is triable.

Not to extend to Writs of Appeal of Felony or Murder, &c.

VII. Provided always, and be it enacted by the Authority aforesaid, That nothing in this Act before contained shall extend to any Writ, Declaration, or Suit of Appeal of Felony or Murder, or to any Indictment or Presentment of Treason, Felony, or Murder, or other Matter, or to any Process upon any of them, or to any Writ, Bill, Action, or Information upon any Penal(8) Statute.

Where Jurors are to view Lands, &c. Court may order Special Writs of Distringas or Habeas Corpora. See 1 Bur 252, 256, and 3 G. II. c. 25.

VIII. And be it further enacted by the Authority aforesaid, That from and after the said first Day of *Trinity* Term in any Actions brought in any of her Majesty's Courts of Record at *Westminster*, where it shall appear to the Court in which such Actions are depending, that it will be proper and necessary, that the Jurors who are to try the Issues in any such Actions, should have the View of the Messuages, Lands, or Place in question, in order to their better understanding the Evidence that will be given upon the Trials of such Issues, in every such Case the respective Courts in which such Actions shall be depending, may order Special Writs of *Distringas* or *Habeas Corpora* to issue, by which the Sheriff, or such other Officer to whom the said Writs shall be directed, shall be commanded to have six out of the first twelve of the Jurors named in such Writs, or some greater Number of them, at the Place in question, some convenient Time before the Trial, who then and there shall have the Matters in question shewn to them by two Persons in the said Writs named, to be appointed by the Court; and the said Sheriff or other Officer, who is to execute the said Writs shall, by a special Return upon the same, certify that the View hath been had according to the Command of the same Writs.

All Grants and Conveyances, to be good, without Attornment of Tenants.

IX. And be it further enacted by the Authority aforesaid, That from and after the said first Day of *Trinity* Term, all Grants or Conveyances thereafter to be made, by Fine or otherwise, of any Manors or Rents, or of the Reversion or Remainder of any Messuages or Lands, shall be good and effectual, to all Intents and Purposes, without any Attornment of the Tenants of any such Manors, or of the Land out of which such Rent shall be issuing, or of the particular Tenants upon whose particular Estates any such Reversions or Re-

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Issue on the Prescription, which had been entered for the Defendants, went to the whole Trespass, the finding on the whole Record being in Favour of the Defendant, the Plaintiff could not be intitled to the Costs of the general Issue.

It was formerly held, that the Plaintiff or Defendant in Replevin, in whose Favour any particular Issues were found, (the general Result of the Suit being in Favour of the other Party,) was only entitled to the Costs of the Pleadings—but it is now settled, that he entitled to the Costs of the Trial.—Brooke v. Willett, 2 H. Bl. 435—Vollum v. Simpson, 2 B. & P. 368. The Courts allow the particular Costs, to which a Party is entitled under this Section, to be deducted out of the general Costs awarded to the opposite Party.

(8) Vide Statute 4 Geo. c. 26, (requiring all Proceedings to be in English,) which provides, Section 4, that all Statutes of Jeofails shall extend to all Proceedings in Courts of Justice, (except criminal Cases,) where the Proceedings are in English, and which, in Middleton v. Wynne, Willes, 597, it was ruled to have the Effect of extending all Statutes of Jeofails to penal Actions.

mainders shall and may be expectant or depending, as if their Attornment had been had and made. (9) No. 23. 4 Anne, c. 16.

X. Provided nevertheless, That no such Tenant shall be prejudiced or damaged by Payment of any Rent to any such Grantor or Conusor, or by Breach of any Condition for Nonpayment of Rent, before Notice shall be given to him of such Grant by the Conusee or Grantee. Proviso.

XI. And be it further enacted by the Authority aforesaid, That from and after the said first Day of *Trinity* Term, no dilatory Plea, (10) shall be received (11) in any Court of Record, unless the Party offering such Plea, do, by Affidavit, prove the Truth (12) thereof, or shew some probable Matter to the Court to induce them to believe that the Fact of such dilatory Plea is true. No dilatory Plea unless on Affidavit. See 3 Bur. 1618.

XII. And be it further enacted by the Authority aforesaid, That from and after the said first Day of *Trinity* Term, where any Action of Debt shall be brought upon any single Bill, or where Action of Debt, or *Scire facias*, shall be brought upon any Judgment, if the Defendant hath paid the Money due upon such Bill or Judgment, such Payment shall and may be pleaded in Bar of such Action or Suit, and where an Action of Debt is brought upon any Bond which hath a Condition or Defeazance to make void the same upon Payment of a lesser Sum at a Day or Place certain, (13) if the Obligor, his Heirs, Executors, or Administrators, have, before the Action brought, paid to the Obligee, his Executors, or Administrators, the Principal and Interest due by the Defeasance or Condition of such Bond, though such Payment was not made strictly according to the Condition or Defeazance; yet it shall and may nevertheless be pleaded in Bar of such Action, and shall be as effectual a Bar thereof, as if the Money had been paid at the Day and Place according to the Condition or Defeazance, and had been so pleaded. Action of Debt brought on single Bill or Judgment, after Money paid, such Payment may be pleaded in Bar. The like on Bonds.

XIII. And be it further enacted by the Authority aforesaid, That if at any Time, pending an Action upon any such Bond with a Penalty, the Defendant shall bring into the Court where the Action shall be depending, all the Principal Money, and Interest due on such Bond, and also all such Costs as have been expended in any Suit or Suits in Law or Equity upon such Bond, the said Money so brought in shall be deemed and taken to be in full Satisfaction and Discharge of the said Bond, and the Court shall and may give Judgment to discharge every such Defendant of and from the same accordingly. Principal and Interest on Bonds paid in Court, &c. See 3 Bur. 1370 to 1375.

'XIV. And whereas by an Act of Parliament made in the twenty-'ninth Year of King Charles the Second, intituled, *An Act for 'Prevention of Frauds and Perjuries*, it is enacted, That no Nuncu- Nuncupative Wills. 29 Car. II. c. 3.

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(9) See Note to Statute 27 Hen. VIII. c. 16, for Enrolment of Bargains and Sales, post Class No. Title Uses.

(10) This extends to criminal Proceedings—Rex. v. Grainger, 3 Bur. 1617; to Plea by Terre Tenants in Scire Facias, that there are others not warned—Wms. Note to Foxwist v. Tremaine, 2 Saund. 210, (e); to Aid Prayer in a Real Action—Onslow v. Smith, 2 B. & P 384;—not to Matters apparent on the Proceedings, as Want of Addition—Hughes v. Alvarez, 2 Lord Raym. 1409—Sherman v. Alvarez, Str. 639; or that that the Party is an Attorney of the same Court.—M'Dougal v. Claridge, 1 Chitt. Plead. 453, No.

(11) If there be no Affidavit, or it be defective, the Plaintiff may treat the Plea as a Nullity and sign Judgment, or move the Court to set it aside.—Foxwist v. Tremaine, 2 Wms. Saund. 210, 1 Str. 638.

(12) It is not necessary that the Affidavit should be made by the Party himself.—Lumley v. Foster, Barnes, 344.

(13) The Provisions of the Section extended to a Case where the Condition did not specify any Day of Payment—such Bond is due immediately, and carries Interest, although not expressly reserved.—Farquhar v. Merrice, 7 T. R. 124.

No. 23. 4 Anne c. 16. 'pative Will shall be good, where the Estate thereby bequeathed shall 'exceed the Value of thirty Pounds, that is not proved by the Oaths 'of three Witnesses, at the least, that were present at the making 'thereof;' it is hereby declared, That all such Witnesses as are and ought to be allowed to be good Witnesses upon Trials at Law, by the Laws and Customs of this Realm, shall be deemed good Witnesses to prove any Nuncupative Will, or any Thing relating thereunto.

'XV. And whereas it hath been doubted, whether since the 'making of the said last mentioned Act of Parliament, the Declara-'tions or Creations of Uses, Trusts, or Confidences, of any Fines or 'Common Recoveries manifested by Deed made after the levying or 'suffering of such Fines or Recoveries, are good and effectual in 'Law,' It is hereby declared, That all Declarations, or Creations of Uses, Trusts, or Confidences, of any Fines or Common Recoveries of any Lands, Tenements, or Hereditaments, manifested and proved, or which hereafter shall be manifested and proved, by any Deed already made, or hereafter to be made, by the Party who is by Law enabled to declare such Uses or Trusts, after the levying or suffering of any such Fines or Recoveries, are and shall be as good and effectual in the Law, as if the said last mentioned Act had not been made. (14)

Declarations of Uses, Trusts, &c. of Fines or Recoveries.

29 Car. II c. 3

XIV. And be it further enacted by the Authority aforesaid, That from and after the said first Day of *Trinity* Term, no Claim or Entry to be made of or upon any Lands, Tenements, or Hereditaments, shall be of any Force or Effect to avoid any Fine levied with Proclamations, according to the Form of the Statute in that Case made and provided, in the Queen's Court of *Common Pleas* at *Westminster*, or in the Courts of Sessions in any of the Counties Palatine, or in Courts of Grand Sessions in *Wales*, of any Lands, Tenements, or Hereditaments, or shall be a sufficient Entry or Claim within the Statute made in the twenty-first Year of King JAMES the First, intituled, *An Act for Limitation of Actions, and for avoiding of Suits in Law*, unless upon such Entry or Claim, an Action shall be commenced within one Year next after the making of such Entry or Claim, and prosecuted with Effect.

No Claim or Entry to avoid a Fine unless Action be commenced in one Year after Entry made.

21 Jac. I c. 16

XVII. And be it further enacted by the Authority aforesaid, That all Suits and Actions in the Court of Admiralty for Seamens Wages, which shall become due after the said first Day of *Trinity* Term, shall be commenced and sued within six Years next after the Cause of such Suits or Actions shall accrue, and not after.

Seamens' Wages.

XVIII. Provided nevertheless, and be it further enacted, That if any Person or Persons, who is or shall be intitled to any such Suit or Action for Seamens Wages, be or shall be, at the Time of any such Cause of Suit or Action accrued, fallen or come, within the Age of twenty-one Years, Feme Covert, *Non Compos Mentis*, imprisoned, or beyond the Seas, that then such Person or Persons shall be at Liberty to bring the same Actions, so as they take the same within six Years next after their coming to, or being of full Age, Discovert, of sane Memory, at large, and returned from beyond the Seas.

Proviso in Case of Infants, Feme Covert, or Non Compos Mentis, &c.

XIX. And be it further enacted by the Authority aforesaid, That if any Person or Persons against whom there is or shall be any such Cause of Suit or Action for Seamens Wages, or against whom there shall be any Cause of Action of Trespass, Detinue, Actions Sur Trover, or Replevin for taking away Goods or Cattle, or of Action of Account, or upon the Case, or of Debt grounded upon any Lending or Contract without Specialty, of Debt for Arrearages of Rent, or

Action against Persons gone beyond the Seas may be brought after their Return.

(14) A Declaration of Uses, by Husband and Wife, four Years after a Fine was levied, held good—the Jury having found that the Fine was levied to the Uses so declared.—Bushell v. Burland, 11 Mod. 196.—Holt, R. 733. As to the Necessity of the Declaration of Uses being by Deed, see Sugden's Note to Gibb. Uses and Trusts, 112. (62)

Assault, Menace, Battery, Wounding and Imprisonment, or any of them, be or shall be, at the Time of any such Cause or Suit or Action given or accrued, fallen, or come, beyond the Seas; that then such Person or Persons, who is or shall be intitled to any such Suit or Action, shall be at Liberty to bring the said Actions against such Person and Persons, after their Return from beyond the Seas, so as they take the same after their Return from beyond the Seas, within such Times as are respectively limited for the bringing of the said Actions before by this Act, and by the said other Act made in the one and twentieth Year of the Reign of the Reign of King JAMES the First.

No. 23.
4 Anne, c. 16.
Proviso.
21 Jac. I. c. 16.

XX. And be it enacted by the Authority aforesaid, That if any Person or Persons shall be arrested from and after the said first Day of *Trinity* Term, by any Writ, Bill, or Process, issuing out of any of her Majesty's Courts of Record at *Westminster*, (15) at the Suit of any common Person, and the Sheriff or other Officer taketh Bail from such Person, against whom such Writ, Bill, or Process is taken out, the Sheriff or other Officer at the Request and Costs of the Plaintiff in such Action or Suit, or his lawful Attorney, shall assign to the Plaintiff in such Action the Bail Bond, or other Security taken from such Bail, by endorsing the same, and attesting it under his Hand and Seal in the Presence of two or more credible Witnesses, which may be done without any Stamp; provided the Assignment so endorsed be duly stampt before any Action be brought thereupon, and if the said Bail Bond or Assignment, or other Security taken for Bail be forfeited, the Plaintiff in such Action, after such Assignment made, may bring an Action and Suit thereupon in his own Name, and the Court where the Action is brought, may by Rule or Rules of the same Court, give such Relief to the Plaintiff and Defendant in the original Action, and to the Bail, upon the said Bond or other Security taken from such Bail, as is agreeable to Justice and Reason, and that such Rule or Rules of the said Court shall have the Nature and Effect of a Defeazance to such Bail Bond, or other Security for Bail. (16)

Bail Bond taken by Sheriff, &c. may be assigned to the Plaintiff.
Proviso.

XXI. And be it further enacted by the Authority aforesaid, That all Warranties which shall be made after the said first Day of *Trinity* Term, by any Tenant for Life, of any Lands, Tenements, or Hereditaments, the same descending or coming to any Person in Reversion or Remainder, shall be void and of none Effect; and likewise all collateral Warranties, which shall be made after the said first Day of *Trinity* Term, of any Lands, Tenements, or Hereditaments, by any Ancestor who has no Estate of Inheritance in Possession in the same, shall be void against the Heir. (17)

Warranty by Tenant for Life void.

XXII. And be it further enacted by the Authority aforesaid, That no *Subpœna*, or any other Process for Appearance, do issue out of any Court of Equity, till after the Bill is filed with the proper Officer in the respective Courts of Equity, except in Cases of Bills for Injunctions to stay Wastes, or stay Suits at Law commenced, and a Certificate thereof brought to the *Subpœna* Office, or to him who usually makes out *Subpœnas* or other Process in the several Courts of Equity, under the Hand of the Six Clerk, or other Clerk or Officer

No Subpœna to issue till after Bill filed.
Exception.

(15) The same Provisions extended in certain Cases to Bail Bonds on Process, from the Counties Palatine of Lancaster and Chester.—Stat. 22 G. II. c. 36. sec. 35.

(16) The Action on the Assignment of the Bail Bond must be brought in the same Court as the original Action.—1 Bur. 642—3 Bur. 1923—3 Wils. 348—2 Bl. 838.—So an Action by the Sheriff on the Bail Bond, in B. R. 8 T. R. 152, contra in C. B. 1 H. Bl. 651

(17) The Effect of Warranty, by Tenant in Tail in Possession, is not restrained by this Act.—See Cruise on Conveyancing, tit. 32, c. 4, sec. 8.

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4 Anne, c. 16.

who usually files Bills in Equity, for which Certificate he shall receive no Fee.

On dismissing Bills in Equity, Plaintiff or Defendant to pay full Costs.

XXIII. And for the better preventing vexatious Suits in Courts of Equity, be it further enacted, That upon the Plaintiff's dismissing his own Bill, or the Defendant's dismissing the same for want of Prosecution, the Plaintiff in such Suit shall pay to the Defendant or Defendants, his or their full Costs, to be taxed by a Master: And that no Copy, Abstract, or Tenor of any Bill in Equity, do go with the *Dedimus* or Commission for taking the Defendant's Answer; but in Lieu and Recompense thereof, the sworn Clerks of the Court of *Chancery* shall take to their own Use, in all Causes, the whole Term Fee of three Shillings and four Pence, and also the whole Fee or Fees of and for all small Writs made by the said sworn Clerks.

Act to extend to all Suits for the King's Debts, &c.

Rex v. Phillips, in Scacc Hil. 1746.

XXIV. And be it further enacted by the Authority aforesaid, That from and after the said first Day of *Trinity* Term, this Act and all the Statutes of Jeofails shall extend to all Suits in any of her Majesty's Courts of Record at *Westminster*, for Recovery of any Debt immediately owing, or any Revenue belonging to her Majesty, her Heirs or Successors; and shall also extend to all Courts of Record in the Counties Palatine of *Lancaster*, *Chester*, and *Durham*, and the Principality of *Wales*, and to all other Courts of Record within this Kingdom.

On quashing Writ of Error Defendant to have Costs.

XXV. And for the preventing great Vexation from suing out defective Writs of Error; be it enacted by the Authority aforesaid, That upon the quashing any Writ of Error to be sued out after the said first Day of *Trinity* Term, for Variance from the original Record or other Defect, (18) the Defendants in such Error shall recover against the Plaintiff or Plaintiffs, issuing out such Writ, his Costs, as he should have had if the Judgment had been affirmed, and to be recovered in the same Manner.

Probats of Wills and Administrations.

'XXVI. And whereas great Trouble and Expence is frequently 'occasioned to the Widows and Orphans of Persons dying Intestate 'to Monies or Wages due for Work done in her Majesty's Yards and 'Docks, by Disputes happening about the Authority of granting 'Probate of the Wills, and Letters of Administration of the Goods 'and Chattels of such Persons, and for preventing such unnecessary 'Trouble and Expence;' Be it therefore enacted by the Authority aforesaid, That the Power of granting Probates of the Wills, and Letters of Administration of the Goods and Chattels of such Person and Persons respectively, is, and is hereby declared to be, in the Ordinary of the Diocese, or such other Person, to whom the Ordinary Power of Probat of Wills, or granting Letters of Administration do belong, where such Person and Persons shall respectively die; and that the Salary, Wages, or Pay due to such Person or Persons from the Queen's Majesty, her Heirs or Successors for Work done in any the Yards or Docks, shall not be taken or deemed to be *Bona notabilia*, whereby to found the Jurisdiction of the Prerogative Court.

Bona notabilia.

Actions of Account may be brought against Executors of Guardian, Bailiff, &c.

XXVII. And be it enacted by the Authority aforesaid, That from and after the said first Day of *Trinity* Term, Actions of Account shall and may be brought and maintained against the Executors and Administrators of every Guardian, Bailiff, and Receiver; and also by one Joint-tenant, and Tenant in Common, his Executors and Administrators, against the other, as Bailiff for receiving more than

(18) The Statute extends to all Writs of Error.—Cooper v. Ginger, 1 Str. 606—2 Lord Raym. 1403. To a Writ of Error, quashed because brought by a Feme Covert, without her Husband.—M'Namara v. Fisher, 8 T. R. 302.

comes to his just Share or Proportion, and against the Executor and Administrator of such Joint-tenant, or Tenant in Common; and the Auditors appointed by the Court, where such Action shall be depending, shall be, and are hereby impowered to administer an Oath, and examine the Parties touching the Matters in question, and for their Pains and Trouble in auditing and taking such Account, have such Allowance as the Court shall adjudge to be reasonable, to be paid by the Party on whose Side the Balance of the Account shall appear to be.(19)

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4 Anne, c. 16.

Auditors to examine the Parties on Oath.

(19) The last reported Case in an Action of Account, is Godfrey v. Saunders, 3 Wills. 94. It appears that the Action had, at that time, fallen into Disuse, and Lord Ch. J. Wilmot expressed a Satisfaction at seeing it revived. The Advantage of entering into an Examination of disputed Items of Account before Auditors, rather than before a Judge and Jury at Nisi Prius, is very evident; but the particular Cases in which the proper Action of Account can be properly brought, are comparatively few—and those Cases are now more generally submitted to Courts of Equity. The Examination of cross Accounts in Courts of Law, in ordinary Cases, did not exist at Common Law, and was only introduced by the Statutes of Set off. Such Cases are constantly brought on at Nisi Prius, when the Impossibility of disposing of them by that Mode of Proceeding is fully recognized by the Court and Counsel, and the Case is almost necessarily referred to Arbitration, very often contrary to the Wishes of the Parties, who are anxious that the Matter should be brought to a Close, and are mutually averse to the further Expense and Delay they are thereby subjected to, and which they often regard as a Sacrifice of their Claims to the Convenience of other Persons. By this Course, all the Expense and Inconvenience of a Trial is incurred—but much good might be done, and much Loss, and even Ruin, avoided, if the Courts were invested with a summary Power, upon due Application from either Party, to submit the Examination of Matters of disputed Account to Auditors appointed for that Purpose, acting under the Controul and Superintendance of the Court, with sufficient Powers to direct the Trial of special Issues on any disputable Facts which would be the proper Object of a Trial by Jury.

No. 24.

6 Anne, c. 18.—An Act for the more effectual Discovery of the Death of Persons pretended to be alive, to the Prejudice of those who claim Estates after their Deaths.

'WHEREAS divers Persons, as Guardians and Trustees for Infants, and Husbands in Right of their Wives, and other Persons having Estates or Interests determinable upon a Life or Lives, 'have continued to receive their Rents and Profits of such Lands after 'the Determination of their said particular Estates or Interests: And 'whereas the Proof of the Death of the Persons, on whose Lives 'such particular Estates or Interests depended, is very difficult, and 'several Persons have been, and may be thereby defrauded:' For Remedy whereof, and for preventing such fraudulent Practices, Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That any Person or Persons who hath or shall have any Claim or Demand in or to any Remainder, Reversion, or Expectancy, in or to any Estate after the Death of any Person within Age, married Woman, or any other Person whatsoever, upon Affidavit made in the High Court of *Chancery*, by the Persons so claiming such Estate, of his or her Title, and that he or she hath cause to believe that such

6 Anne, c. 18.

19 Car. I. c. 6.

Person claiming Estate in Remainder, &c. after Death of Minor, married Woman, &c. on Affidavit, &c. that he hath cause to believe such Minor, &c. is dead, Ld. Chancellor to cause such Minor &c. to be produced &c. Guardian, &c. refusing to produce such Infant, &c.

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6 Anne, c. 18.

Minor, married Woman, or other Person is dead, and that his or her Death is concealed by such Guardian, Trustee, Husband, or any other Person, shall and may once a Year, if the Person aggrieved shall think fit, move the Lord Chancellor, Keeper, or Commissioners for the Custody of the Great Seal of *Great Britain* for the Time being, to order, and they are hereby authorized and required to order such Guardian, Trustee, Husband, or other Person, concealing or suspected to conceal such Person, at such Time and Place as the said Court shall direct, on personal or other due Service of such Order, to produce and shew to such Person and Persons, (not exceeding two) as shall in such Order be named by the Party or Parties prosecuting such Order, such Minor, married Woman, or other Persons aforesaid; and if such Guardian, Trustee, Husband, or such other Person, as aforesaid, shall refuse or neglect to produce or shew such Infant, married Woman, or such other Person, on whose Life any such Estate doth depend, according to the Directions of the said Order, That then the Court of *Chancery* is hereby authorized and required to order such Guardian, Trustee, Husband, or other Person, to produce such Minor, married Woman, or other Person concealed, in the said Court of *Chancery*, or otherwise before Commissioners to be appointed by the said Court, at such Time and Place as the Court shall direct, two of which Commissioners shall be nominated by the Party or Parties prosecuting such Order, at his, her, or their Costs, and Charges; and in case such Guardian, Trustee, Husband, or other Person, shall refuse or neglect to produce such Infant, married Woman, or other Person so concealed, in the Court of *Chancery*, or before such Commissioners, whereof Return shall be made by such Commissioners, and that Return filed in the Petty Bag Office, in either or any of the said Cases, the said Minor, married Woman, or such other Person so concealed, shall be taken to be dead, and it shall be lawful for any Person claiming any Right, Title, or Interest, in Remainder or Reversion, or otherwise, after the Death of such Infant, married Woman, or such other Persons so concealed, as aforesaid, to enter upon such Lands, Tenements, and Hereditaments, and Hereditaments, as if such Infant, married Woman, or other Person so concealed, were actually dead.

Party so concealed to be taken to be dead, and Claimant may enter on Land, &c.

On Affidavit that Minor, &c. is beyond Sea Claimant may send over Persons to view such Minor, &c.

II. And be it further enacted by the Authority aforesaid, That if it shall appear to the said Court by Affidavit, that such Minor, married Woman, or other Person, for whose Life such Estate is holden, is, or lately was at some certain Place beyond the Seas in the said Affidavit to be mentioned, it shall and may be lawful for the Party or Parties prosecuting such Order, as aforesaid, at his, her, or their Costs and Charges, to send over one or both the said Persons appointed by the said Order, to view such Minor, married Woman, or other Person, for whose Life any such Estate is holden; and in case such Guardian, Trustee, Husband, or other Person concealing or suspected to conceal such Persons as aforesaid, shall refuse or neglect to produce or procure to be produced to such Person or Persons, a personal View of such Infant, married Woman, or other Person, for whose Life any such Estate is holden, That then and in such Case such Person or Persons are hereby required to make a true Return of such Refusal or Neglect to the Court of *Chancery*, which Return shall be filed in the Petty Bag Office, and thereupon such Minor, married Woman, or other Person, for whose Life any such Estate is holden, shall be taken to be dead; and it shall be lawful for any Person claiming any Right, Title, or Interest, in Remainder, Reversion, or otherwise, after the Death of such Infant, married Woman, or other Person, for whose Life any such Estate is holden, to enter upon such Lands, Tenements, and Hereditaments, as if such Infant, married Woman, or

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other Person, for whose Life any such Estate is holden, were actually dead

III. Provided always, That if it shall afterwards appear upon Proof, in any Action to be brought, that such Infant, married Woman, or other Person, for whose Life any such Estate is holden, were alive at the Time of such Order made, That then it shall be lawful for such Infant, married Woman, Guardian, or Trustee, or other Person having any Estate or Interest, determinable upon such Life, to re-enter upon the said Lands, Tenements, or Hereditaments, and for such Infant, married Woman, or other Person, having any Estate or Interest determinable upon such Life, their Executors, Administrators, or Assigns, to maintain an Action against those who, since the said Order, received the Profits of such Lands, Tenements, or Hereditaments, or their Executors, or Administrators, and therein to recover full Damages for the Profits of the same received, from the Time that such Infant, married Woman, or other Person, having any Estate or Interest determinable upon such Life, were ousted of the Possession of such Lands, Tenements, or Hereditaments.

If Infant, &c. alive, after Order made, such Infant, &c. may re-enter.

IV. Provided always, That if any such Guardian, Trustee, Husband, or other Person or Persons, holding or having any Estate or Interest determinable upon the Life or Lives of any other Person or Persons, shall by any Affidavit or otherwise, to the Satisfaction of the said Court of *Chancery*, make appear, That he, she, or they have used, his, her, or their utmost Endeavours to procure such Infant, married Woman, or other Person or Persons, on whose Life or Lives such Estate or Interest doth depend, to appear in the said Court of *Chancery*, or elsewhere, according to the Order of the said Court in that Behalf made, and that he, she, or they cannot procure or compel such Infant, married Woman, or other Person or Persons so to appear, and that such Infant, married Woman, or other Person or Persons, on whose Life or Lives such Estate or Interest doth depend, is, are, or were living at the Time of such Return made and filed as aforesaid, then it shall be lawful for such Person or Persons to continue in the Possession of such Estate, and receive the Rents and Profits thereof for and during the Infancy of such Infant; and the Life or Lives of such married Woman, or other Person or Persons, on whose Life or Lives such Estate or Interest doth or shall depend, as fully as he, she, or they might have done if this Act had not been made.

If Guardian, &c. prove that he hath used his Endeavours to procure such Infant to appear, and that he was then living, &c.

Guardian to continue in Possession.

V. And be it further enacted by the Authority aforesaid, That every Person who, as Guardian or Trustee for any Infant, and every Husband seized in Right of his Wife only, and every other Person having any Estate determinable upon any Life or Lives, who after the Determination of such particular Estates or Interests, without the express Consent of him, her, or them, who are or shall be next and immediately intitled upon and after the Determination of such particular Estates or Interests, shall hold over and continue in Possession of any Manors, Messuages, Lands, Tenements, or Hereditaments, shall be and are hereby adjudged to be Trespassers; and that every Person and Persons, his, her, and their Executors, and Administrators, who are or shall be entitled to any such Manors, Messuages, Lands, Tenements, and Hereditaments, upon or after the Determination of such particular Estates or Interests, shall and may recover in Damages against every such Person or Persons so holding over as aforesaid, and against his, her, or their Executors, or Administrators, the full Value of the Profits received during such wrongful Possession as aforesaid.

Guardian, &c. holding Estates, after Determination of Life of Minor, &c. adjudged Trespassers.

Heirs &c. may recover Damages.

No. 25.

7 Anne, c. 18.—An Act to preserve the Rights of Patrons to Advowsons.

[Inserted Part I. Class II. No. 17.]

No. 26.

9 George I. c. 29.*—An Act to enable Lords of Manors more easily to recover their Fines, and to exempt Infants and Femes Covert from Forfeitures of their Copyhold Estates in particular Cases.

9 Geo. I. c. 29. 'WHEREAS some Doubts have arisen in the Law concerning 'the Power of Lords of Manors in that Part of *Great Britain* 'called *England*, and the Dominion of *Wales*, to seize the Copyhold 'Lands, Tenements, and Hereditaments, Parcel of their Manors, on 'the Neglect or Refusal of Persons to come in, and be admitted 'Tenants of the same:' Therefore for ascertaining the Law, and providing a reasonable and proper Remedy for the Lords of Manors to compel the Admission of their Tenants; Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That where any Person or Persons, being under the Age of One and Twenty Years, or Feme or Femes Covert, shall, from and after the Twenty-fourth Day of *June*, One Thousand Seven Hundred and Twenty-three, be entitled, by Descent, or Surrender to the Use of a Last Will, to be admitted Tenant or Tenants of any Copyhold Messuages, Lands, Tenements or Hereditaments, within that Part of *Great Britain* called *England*, or the Dominion of *Wales*, they the said Infants or Femes Covert not having been admitted thereto, and not having paid their Fines, every such Infant or Feme Covert, in their proper Persons, or such Feme Covert by her Attorney, or such Infant by his or her Guardian or Guardians, if he or she shall have any such; and in Case he or she shall have no Guardian or Guardians, then by his or her Attorney or Attorneys (for which Purpose such Infants and Femes Covert shall be and are hereby impowered, by Writing under his or her Hand and Seal respectively, to appoint an Attorney or Attorneys on his or her Behalf,) shall come to, and appear at, one of the three next Courts which shall be kept (for the keeping whereof the usual Notice shall be given) for such Manor or Manors, whereof such Messuages, Lands, Tenements or Hereditaments, shall be Parcel, and shall there tender and offer themselves to the Lord or his Steward of such Courts, to be admitted Tenants to all and every the said Messuages, Lands, Tenements and Hereditaments so surrendered, descended or come to or to the Use of every such Infant or Feme Covert: To make which Appearance, and to take such Admittance in Behalf of such Infant or Feme Covert, such Guardian and Attorney shall be, and they are hereby respectively authorized and required: And in Default of the Appearance of such Infants or Femes Covert in their own Persons, or by their Guardians or Attorneys in that Behalf, and of Acceptance of such Admittance as aforesaid, it shall

Feme Coverts and Infants may be admitted to Copyhold Estates by their Attorney or Guardian.

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* Vide Evelyn v. Chichester, 3 Burr. 1717.

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9 Geo. I. c. 29.

and may be lawful to and for the Lord or Lords of every such Manor and Manors, or his and their Steward and Stewards of the Courts thereof, after such three several Courts have been duly holden for such Manor or Manors, and Proclamations in such several Courts been regularly made, to nominate and appoint at any subsequent Court or Courts, to be holden for such Manor or Manors, any fit Person to be Guardian or Attorney for every such Infant or Feme Covert for that Purpose only, and by such Guardian or Attorney, to admit every such Infant or Feme Covert to all and every the said Messuages, Lands, Tenements and Hereditaments, according to such Estates as such Infants or Femes Covert shall be legally entitled to therein; and upon every such Admittance, to impose and set such Fine and Fines, as might have been legally imposed and set, if such Infant so admitted had been of full Age, or if such Feme Covert had been sole and unmarried.

In Default of their Appearance, the Lord may appoint a Guardian, &c.

II. And be it further enacted by the Authority aforesaid, That upon every such Admittance or Admittances of any Infant or Feme Covert as aforesaid, the Fine or Fines imposed and set thereupon, shall and may be demanded by the Bailiff or Agent of the Lord or Lords of such Manors, by a Note in Writing signed by the Lord of such Manor, or by his Steward, to be left with such Infant or Feme Covert, or with the Guardian of such Infant, or Husband of such Feme Covert, or with the Tenant or Occupier of the Messuages, Lands or Tenements, to which such Infant or Feme Covert was admitted; and that if in such Case the said Fine or Fines, so imposed and set, be not paid or tendred to such Lord or Lords, or to his or their Steward or Stewards, within three Months after such Demand made, that then it shall and may be lawful to and for the Lord or Lords of such Manor or Manors, where such Admittance or Admittances are had, to enter into and upon all and every the Copyhold Messuages, Lands, Tenements and Hereditaments, to which any such Infant or Feme Covert shall be so admitted, and to hold and enjoy the same, and to receive the Rents, Issues and Profits thereof, but without Liberty to fell any Timber standing thereon, for so long Time only and until by such Rents, Issues and Profits, such Lord or Lords shall be fully paid and satisfied such Fine and Fines, together with all reasonable and necessary Costs and Charges, which such Lord or Lords shall have been put unto in levying and raising the same, and in obtaining the Possession of such Copyhold Messuages, Lands, Tenements and Hereditaments, although such Infant or Feme Covert shall happen to die before such Fine and Fines, and the Costs and Charges aforesaid, shall be raised and collected; of all which Rents, Issues and Profits, so to be received by such Lord or Lords of such Manor or Manors, or his or their Stewards, Bailiffs or Servants, upon the Occasion aforesaid, such Lord or Lords of such Manor or Manors, shall yearly and every Year, upon Demand to be made by such Person or Persons, who shall be intitled to the Surplus of the Rents and Profits, over and above what will pay and satisfy such Fine and Costs and Charges so received as aforesaid, or by such Person or Persons, as shall be then intitled to such Copyhold Estate, give and render a just and true Account, and shall pay the said Surplus Rents, Issues and Profits, if any, to such Person and Persons, as shall be respectively intitled to the same.

Fines of Feme Coverts, &c. in what Manner demandable.

If not paid, &c. the Lord may enter and receive the Profits of the Copyhold till he is satisfied, &c.

The Lord to account yearly.

III. And it is hereby further enacted by the Authority aforesaid, That as soon as such Fine or Fines, and the Costs, Charges and Expences aforesaid, shall be fully paid and satisfied, or if after such Seizure of, and Entry upon such Copyhold Lands, Tenements or Hereditaments, for the Purposes aforesaid, such Fine or Fines, and the Costs and Charges aforesaid, shall be lawfully tendred and offered

No. 26. 9 Geo. I. c. 29

to be paid and satisfied to the Lord or Lords of such Manor or Manors. that then in any of the said Cases it shall and may be lawful to and for such Infant or Feme Covert, or other Person intitled thereto, to enter upon, and take Possession of, and hold the said Copyhold Premises, according to such Estate or Interest, as he or she shall be lawfully intitled to therein; and the Lord and Lords of such Manor or Manors shall, and is and are hereby required, in any of the said Cases, to deliver Possession thereof accordingly; and if such Lord or Lords of such Manor, after such Fine or Fines, and the Costs and Charges aforesaid, shall be fully paid and satisfied, or after the same shall have been tendred or offered to be paid as aforesaid, shall refuse to deliver the Possesion of the said Copyhold Premises as aforesaid, he or they shall be liable to, and shall make Satisfaction to the Person or Persons so kept out of Possession, for all the Damages that he or she shall thereby sustain, and all the Costs and Charges that he or she shall be put unto for Recovery thereof.

And shall deliver up Possession on Satisfaction of the Fines.

IV. And be it further enacted by the Authority aforesaid, That where any Infant or Feme Covert shall be admitted to any Copyhold Messuages, Lands, Tenements or Hereditaments, if the Guardian of such Infant, or Husband of such Feme Covert, shall pay to the Lord or Lords of any Manor or Manors, the Fine or Fines legally imposed and set upon such Admittance or Admittances, and the Costs and Charges which such Lord of such Manors shall have been put unto as aforesaid; that then it shall and may be lawful to and for every Guardian of such Infant, or Husband of such Feme Covert, their Executors and Administrators, to enter into, and to hold and enjoy all and every the said Copyhold Messuages, Lands, Tenements and Hereditaments, to which such Infant or Feme Covert shall be so admitted, and the Rents, Issues and Profits thereof to receive and take to his and their own Use, until thereby such Guardian of such Infant, or Husband of such Feme Covert, their Executors and Administrators, shall be fully satisfied and paid all and every such Sum and Sums of Money, as they shall respectively pay and disburse upon the Account aforesaid, notwithstanding the Death or Deaths of such Infants or Femes Covert shall happen before such Sum or Sums of Money so expended shall or may be so raised and reimbursed.

Guardians or Husbands paying Fines, may reimburse themselves out of the Rents of the Copyhold.

V. Provided always, and be it enacted by the Authority aforesaid, That from and after the aforesaid twenty-fourth Day of *June* One Thousand Seven Hundred and Twenty-three, no Infant or Feme Covert shall forfeit any Copyhold Messuages, Lands, Tenements or Hereditaments, within that Part of *Great Britain* called *England*, and the Dominion of *Wales*, for their Neglect or Refusal to come to any Court or Courts to be kept for any Manor or Manors, whereof such Messuages, Lands, Tenements or Hereditaments are Parcel, and to be admitted thereto, nor for the Omission, Denial or Refusal of any such Infant or Feme Covert, to pay any Fine or Fines, imposed or set upon their or any of their Admittances to any such Copyhold Messuages, Lands, Tenements or Hereditaments; any Law, Usage, or Custom to the contrary thereof notwithstanding.

No Forfeiture to be incurred by Feme Coverts, &c for not appearing, or refusing to pay Fines

VI. Provided nevertheless, That if the said Fine or Fines, imposed in any of the Cases before mentioned, shall not be warranted by the Custom of the Manor, or shall be unlawful, that then such Infant or Feme Covert shall be at Liberty to controvert the Legality of such Fine or Fines, in such Manner as he or she might have done, if this Act had never been made; any Thing herein contained to the contrary notwithstanding.

Fines not warranted by Custom, &c. may be contrary.

No. 27.

4 George II. c. 28.—An Act for the more effectual preventing Frauds committed by Tenants, and for the more easy Recovery of Rents, and RENEWAL of LEASES.

[See this Act, Landlord and Tenant, Part IV. No. By Section 6, Chief Leases may be renewed without surrendering all the Under Leases.]

No. 28.

7 George II. c. 20.—An Act for the more easy Redemption and Foreclosure of Mortgages.

7 Geo. II. c. 20.

4 & 5 W. & M. c. 16.

'WHEREAS Mortgagees frequently bring Actions of Ejectment 'for the Recovery of Lands and Estates to them mortgaged, 'and bring Actions on Bonds given by Mortgagors to pay the Money 'secured by such Mortgages, and for performing the Covenants there'in contained, and likewise commence Suits in his Majesty's Courts 'of Equity, to foreclose their Mortgagors from redeeming their 'Estates; and the Courts of Law, where such Ejectments are 'brought, have not Power to compel such Mortgagees to accept the 'principal Monies and Interests due on such Mortgages, and Costs, 'or to stay such Mortgagees from proceeding to Judgment and Execu'tion in such Actions; but such Mortgagors must have Recourse to 'a Court of Equity for that Purpose; in which Case likewise the 'Courts of Equity do not give Relief until the Hearing of the Cause:' For Remedy thereof, and to obviate all Objections relating to the same; Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the first Day of *Easter* Term One Thousand Seven Hundred and Thirty-four, where any Action shall be brought on any Bond for Payment of the Money secured by such Mortgage, or Performance of the Covenants therein contained, or where any Action of Ejectment shall be brought in any of his Majesty's Courts of Record at *Westminster*, or in the Court of Great Sessions in *Wales*, or in any of the superior Courts in the Counties Palatine of *Chester*, *Lancaster*, or *Durham*, by any Mortgagee or Mortgagees, his, her, or their Heirs, Executors, Administrarors or Assigns, for the Recovery of the Possession of any mortgaged Lands, Tenements or Hereditaments, and no Suit shall be then depending in any of his Majesty's Courts of Equity in that Part of *Great Britain* called *England*, for or touching the foreclosing or redeeming of such mortgaged Lands, Tenements or Hereditaments; if the Person or Persons having Right to redeem such mortgaged Lands, Tenements or Hereditaments, and who shall appear and become Defendant or Defendants in such Action, shall at any Time, pending such Action, pay unto such Mortgagee or Mortgagees, or in case of his, her, or their Refusal, shall bring into Court, where such Action shall be depending, all the Principal Monies and Interest due on such Mortgage, and also all such Costs as have been expended in any Suit or Suits at Law or in Equity upon such Mortgage (such Money for Principal, Interest, and Costs, to be ascertained and computed by the

In Actions concerning Mortgages or Ejectments,

no Suit being then depending to foreclose such Mortgage,

the Mortgagor's rendering the Principal, Interest, and Costs in Court shall be deemed a full Satisfaction,

No. 28.
7 Geo II. c. 20.

Court where such Action is or shall be depending, or by the proper Officer by such Court to be appointed for that Purpose), the Monies so paid to such Mortgagee or Mortgagees, or brought into such Court, shall be deemed and taken to be in full Satisfaction and Discharge of such Mortgage, and the Court shall and may discharge every such Mortgagor, or Defendant, of and from the same accordingly; and shall and may, by Rule or Rules of the same Court, compel such Mortgagee or Mortgagees, at the Costs and Charges of such Mortgagor or Mortgagors, to assign, surrender, or reconvey such mortgaged Lands, Tenements, and Hereditaments, and such Estate and Interest, as such Mortgagee or Mortgagees have or hath therein, and deliver up all Deeds, Evidences, and Writings, in his, her, or their Custody, relating to the Title of such mortgaged Lands, Tenements, and Hereditaments, unto such Mortgagor or Mortgagors, who shall have paid or brought such Monies into the Court, his, her, or their Heirs, Executors, or Administrators, or to such other Person or Persons, as he, she, or they, shall for that Purpose nominate or appoint.

and the Court may compel the Mortgagee to surrender the Premises.

II. And be it further enacted by the Authority aforesaid, That from and after the said first Day of *Easter* Term, One Thousand Seven Hundred and Thirty-four, where any Bill or Bills, Suit or Suits, shall be filed, commenced or brought in any of his Majesty's Courts of Equity, in that Part of *Great Britain* called *England*, by any Person or Persons having or claiming any Estate, Right or Interest in any Lands, Tenements or Hereditaments, under or by virtue of any Mortgage or Mortgages thereof, to compel the Defendant or Defendants in such Suit or Suits (having or claiming a Right to redeem the same) to pay the Plaintiff or Plaintiffs in such Suit or Suits, the Principal Money and Interest due on any such Mortgage, or the Principal Money and Interest due on such Mortgage, together with any Sum or Sums of Money due on any Incumbrance or Specialty, charged or chargeable on the Equity of Redemption thereof, and in Default of Payment thereof, to foreclose such Defendant or Defendants of his, her, or their Right or Equity of redeeming such mortgaged Lands, Tenements, or Hereditaments; such Court and Courts of Equity, where such Suit or Suits shall be depending, upon Application made to such Court by the Defendant or Defendants in such Suit, having a Right to redeem such mortgaged Lands, Tenements or Hereditaments, and upon his or their admitting the Right and Title of the Plaintiff or Plaintiffs in such Suit, may and shall at any Time or Times, before such Suit or Cause shall be brought to Hearing, make such Order or Decree therein, as such Court or Courts might or could have made therein, in case such Suit or Cause had then been regularly brought to Hearing before such Court or Courts; and all Parties to such Suit or Suits shall be bound by such Order or Decree so made, to all Intents and Purposes, as if such Order or Decree had been made by such Court, at or subsequent to the Hearing of such Cause or Suit; any Usage to the contrary thereof in any wise notwithstanding.

On Bills to foreclose,

the Court, on Defendant's Request, may proceed to a Decree, before a regular Hearing, and all Parties shall be bound thereby, as if the Cause had been regularly heard.

III. Provided always, That this Act, or any Thing herein contained, shall not extend to any Case where the Person or Persons, against whom the Redemption is or shall be prayed, shall (by Writing under his, her, or their Hands, or the Hand of his, her, or their Attorney, Agent or Solicitor, to be delivered, before the Money shall be brought into such Court at Law, to the Attorney or Solicitor for the other Side) insist, either that the Party praying a Redemption has not a Right to redeem, or that the Premises are chargeable with other or different principal Sums, than what appear on the Face of the Mortgage, or shall be admitted on the other Side; nor to any Case where the Right of Redemption to the mortgaged Lands and Premises in Question in any Cause or Suit shall be controverted or questioned

This Act not to extend to Cases where the Right of Redemption is controverted, or the Money due not adjusted.

by or between different Defendants in the same Cause or Suit; nor shall be any Prejudice to any subsequent Mortgagee or Mortgagees, or subsequent Incumbrancer; any Thing in this Act contained to the contrary thereof in any wise notwithstanding. (1)

No. 28. 7 Geo. II. c. 20. or to prejudice any subsequent Mortgagee.

(1) This Order can only be made upon Admission of the Sum claimed as due, and the Master cannot examine Evidence.—Iberson v. Iberson, 4 Vesey, 105. An Order cannot be made under the Act, where there is any Thing in the Suit beyond the mere Foreclosure.—Semble, Bastard v. Clarke, 7 Vesey, 419. A Defendant, in Contempt for not answering, cannot apply under the Statute.—Hewitt v. M'Cartney, 13 Vesey, 560.

It was said, in Perry v. Barker, 13 Vesey, 205, on the Information of Lord Redesdale, that the Course in Ireland is to decree a Sale instead of a Foreclosure, and if the Sale produce more than the Debt, the Surplus goes to the Mortgagor; if less, the Mortgagee has his Remedy for the Difference.

The Advantage of that Course seems very manifest, as it makes the Pledge available for its real Value, and preserves the Rights of the Creditor for the Difference. The Claims of a Mortgagee, upon a Suit of Foreclosure, are often very much embarrassed by the Variety and Complication of the Interests involved in the Right of Redemption, and with which he has no Concern. It would much add to the Advantage of this Security, without prejudicing any other Interests, to authorise the Courts of Equity, upon Petition, to direct a Sale, after a definite Period, upon giving such Notices as to the Court might seem proper—and for the Surplus, after satisfying the Mortgagee, to be paid into Court subject to be disposed of upon the Application of those concerned: the Sale under the Authority of the Court to be a complete Title against all Claims subsequent to the Mortgage, and the Purchaser to be no further concerned in the Regularity of the Proceedings than by having a Confirmation of the Sale.

By Statute 11 & 12 Geo. III. c. 10, Ir. a Power is given to Courts of Equity, in Ireland, in Case of the Interest upon Mortgages being in Arrears for a Year and a Half, to appoint a Receiver upon Petition and Affidavit—and by 7 Geo. II. c. 14, Ir. Provisions are made for Proceedings on Bills of Foreclosure, when Defendants are out of the Kingdom.—See 2 Gabbett, 339.

No. 29.

39 & 40 George III. c. 98.—An Act to restrain all Trusts and Directions in Deeds or Wills, whereby the Profits or Produce of Real or Personal Estate shall be accumulated, and the beneficial Enjoyment thereof postponed beyond the Time therein limited. [28*th July*, 1800.]

39 & 40 Geo. III. c. 98.

'WHEREAS it is expedient that all Dispositions of Real or 'Personal Estates, whereby the Profits and Produce thereof 'are directed to be accumulated, and the beneficial Enjoyment thereof 'is postponed, should be made subject to the Restrictions herein after 'contained:' May it therefore please your Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in Parliament assembled, and by the Authority of the same, That no Person or Persons shall, after the passing of this Act, by any Deed or Deeds, Surrender or Surrenders, Will, Codicil, or otherwise soever, settle or dispose of any Real or Personal Property, so and in such Manner that the Rents, Issues, Profits, or Produce thereof, shall be wholly or partially accumulated; for any longer Term than the Life or Lives of any such Grantor or Grantors, Settler or Settlers; or the Term of twenty-one Years from the Death of any such Grantor, Settler, Devisor, or Testator; or during the Minority or respective Minorities of any Person or Persons who shall be living, or in *Ventre sa Mère* at the Time of the Death of such Grantor,

No Person, by Deed or Will, &c. shall settle or dispose of any Real or Personal Property, in such Manner that the Rents or Produce shall be accumulated for a longer Term than the Life of the Settler; or 21 Years after his Decease; or during the Minority of any Party living at his Decease; or the Minorities of Persons beneficially entitled.

No. 29.
39 & 40 Geo. III. c 98.

Devisor, or Testator; or during the Minority or respective Minorities only of any Person or Persons who, under the Uses or Trusts of the Deed, Surrender, Will, or other Assurances, directing such Accumulations, would, for the Time being, if of full Age, be entitled unto the Rents, Issues, and Profits, or the Interest, Dividends, or annual Produce so directed to be accumulated: and in every Case where any Accumulation shall be directed otherwise than as aforesaid, such Direction shall be null and void, and the Rents, Issues, Profits, and Produce of such Property so directed to be accumulated, shall, so long as the same shall be directed to be accumulated contrary to the Provisions of this Act, go to and be received by such Person or Persons as would have been entitled thereto if such Accumulation had not been directed. (1)

Any other Direction shall be void, and the Rents, &c. go to the Persons entitled thereto.

Nothing herein to extend to any Provision for Payment of Debts or for raising Portions for Children, or touching the Produce of Timber;

II. Provided always, and be it enacted, That Nothing in this Act contained shall extend to any Provision for Payment of Debts of any Grantor, Settler, or Devisor, or other Person or Persons, or to any Provision for raising Portions for any Child or Children of any Person taking any Interest under any such Conveyance, Settlement, or Devise, or to any Direction touching the Produce of Timber or Wood upon any Lands or Tenements; but that all such Provisions and Directions shall and may be made and given as if this Act had not passed.

nor to any Disposition of Heretable Property in Scotland.

III. Provided also, and be it enacted, That Nothing in this Act contained shall extend to any Disposition respecting Heretable Property within that Part of *Great Britain* called *Scotland.*

Restrictions shall take effect with respect to Wills made before the passing of this Act, only where the Testator shall live, &c. 12 Months after passing this Act.

IV. Provided also, and be it enacted, That the Restrictions in this Act contained shall take Effect and be in Force with Respect to Wills and Testaments made and executed before the passing of this Act, in such Cases only where the Devisor or Testator shall be living, and of sound and disposing Mind, after the Expiration of Twelve Calendar Months from the passing of this Act.

(1) This Act was occasioned by the Will of Mr. Thelluson, the Validity of which, directing an Accumulation during the Lives of his Children, was established in the Case of Thelluson v. Woodford, 4 Vesey, 227, and On Appeal in Dom. Proc. 11 Vesey, 112, 1 B. & P. N. R. 357. A Disposition for an Accumulation, for a longer Period than the Act allows, is valid for the Time allowed, and only void for the Excess.—See Griffiths v. Vere, 9 Vesey, 127.—Longden v. Simson, 12 Vesey, 295.

No. 30.

39 & 40 George III. c. 56.—An Act for Relief of Persons entitled to entailed Estates to be purchased with Trust Monies. [*20th June* 1800.]

39 & 40 Geo. III. c. 56.

WHEREAS by the Practice of Courts of Equity, in Cases in which Money under the Controul of such Courts is subject to be laid out in the Purchase of Lands, to be limited to Uses capable of being barred by Fine, the said Courts direct such Money to be paid to the Party or Parties who could by Fine bar the Uses to which such Lands, in case the same had been purchased, would have been limited, and do not require or compel the actual Investment of such Monies in the Purchase of Lands, notwithstanding other Persons might take Estates or Interests therein, if the same were purchased, and be entitled to hold such Estates or Interests until such Fine was actually levied: And whereas nevertheless, where Money under the Controul of the said Courts is subject to be invested in the Purchase of Lands, to be limited to Uses not capable of being

No. 30
39 & 40 Geo. III.
c. 56

'barred by Fine, but capable of being barred by Recovery, the said 'Courts, according to the Practice thereof, refuse to direct the same 'to be paid to the Party or Parties who, in case such Lands had been 'purchased, could by Recovery have barred all the Uses to which the 'same would have been limited, and require and compel the actual 'Investment of such Monies in a Purchase or Purchases of some 'Lands; and such last mentioned Practice is attended with great 'Inconvenience and Expence to the Party or Parties who by a Reco'very could bar the Uses to which such Lands are to be limited when 'purchased, and the Interest and Benefit of others who might take 'Estates barrable by such Recovery when suffered, is not according to 'such last mentioned Practice materially promoted or secured, and it 'may therefore be expedient to alter such Practice: And whereas it 'may also be expedient to provide some satisfactory and summary 'Proceeding, whereby Trustrees possessed of Money subject to be 'laid out in Lands, may be required in proper Cases to pay such 'Money to the Parties entitled, and under this Act to become entitled 'to receive the same:' be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, in all Cases where Money, under the Controul of any Court of Equity, or of or to which any Individuals as Trustees are possessed or entitled, shall be subject to be invested in the Purchase of Freehold or Copyhold Hereditaments, or both, to be settled upon any Person or Persons, in such Manner that it would be competent in case such Money had been invested in the Purchase of Real Estates for the Person or Persons who would be the Tenant or Tenants of the first Estate or Estates Tail therein, either alone, or together with the Person or Persons who would be the Owner or Owners of the particular preceding Estate or Estates therein, if any, by Deed, Fine, or Common Recovery, or any of them, or other lawful Act, in the case of Freehold Hereditaments, or by Surrender and Recovery, or either of them, or other lawful Act, in the case of Copyhold Hereditaments, to bar the first Estate or Estates Tail, and the Rights and Interests of all Persons in Remainder, it shall not be necessary to have such Money actually invested in Lands or Hereditaments, in order that such Estates Tail and Remainders over may be so barred; but that it shall and may be lawful to and for the High Court of Chancery, or such Court of Equity, under the Controul of which such Money shall be, and in the Case of Trustees, to and for the said High Court of Chancery, in a summary Way, upon Petition of the Person or Persons who would be Tenant or Tenants of the first Estate or first Estates Tail, and of the Person or Persons who would be the Owner or Owners of the antecedent particular Estate or Estates, if any, in the Lands and Hereditaments in case the same were purchased, such Petitioners being Adults, and in case where any of the Parties are or is Femes Covert or a Feme Covert, they, she, or they being first separately examined in Court, or upon a Commission, and consenting to order the Monies subjected to such Trusts to be paid to the Petitioners or any of them, or to be paid and applied in such Manner and for such Purposes as the Petitioners shall appoint and the Court shall approve of. (1)

Where Money under the Controul of a Court of Equity, &c. shall be subject to be invested in the Purchase of freehold or copyhold Premises, to be settled in such Manner that it would be competent to the first Tenant in Tail to bar Estates Tail and Remainders, it shall not be necessary to have such Money so actually invested; but the Court, on Petition of the first Tenant in Tail, and the Party having any antecedant Estates, (being Adults, or if Femes Covert separately examined) may order such Money to be paid to them, or applied as they shall appoint.

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(1) The Order under this Act, to be only made in Vacation, to take Effect in Case the Party shall be living on the second Day of the ensuing Term—Lowton v. Lowton, 5 Vesey, 12—vi. ex parte Bennett, 6 Vesey, 116. Not to be made in Term unless there would be sufficient Time to suffer a Recovery—ex parte Frith, 8 Vesey, 609—nor in any Case without Inquiry if the Party has incumbered.—Ex parte Hodges, 6 Vesey, 576.

No. 30.
39 & 40 Geo. III. c. 56.

Securities for such Money may be transferred under an Order of the Court of Chancery, &c.

II. And be it further enacted, That in all Cases where Monies subjected to be laid out in the Purchase of Hereditaments to be settled as aforesaid, shall happen to be invested in Government or Real or other Securities, all such Securities shall, for the Purposes of this Act, be considered as Money, and shall and may accordingly be transferred, assigned, and disposed of, under an Order of the respective Courts aforesaid, made in a summary Way upon the Petition of such Persons, and with such Examination and Consent, where necessary, as aforesaid, in such and the same Manner as Monies subjected to be laid out in the Purchase of Hereditaments, to be settled as aforesaid, are herein before authorized to be paid, applied, and disposed of.

Part II. Class II.

TITHES.

[In the Note prefixed to the Statutes respecting the Clergy, it was mentioned, that the Statutes relating to Tithes would form a Class under Part IV. with the Exception of those relating to the Power of recovering Tithes before Justices of Peace, which were intended to be placed in Part VI.—but upon further Consideration, it has been thought more convenient to introduce the Subject at this Place. For the Notes upon the Subject of Tithes, I am chiefly indebted to the Assistance of the neat and compendious Treatise of Mr. Toller.]

No. 1.

45 Edward III. c. 3.—A Prohibition shall be granted where a Suit shall be commenced in a Spiritual Court for *Sylva cædua*.

ITEM a la pleinte des ditz grantz & communes monstranz par lour petition qe come ils vendent leur gros boys dage de vint anns ou quarrante ans ou de greindre age as marchantz en profit de eux mesmes & en eide du Roi en sa guerre parsones & vikers de Seint esglise les ditz marchantz empledent & travaillent en court Cristien pur les dismes du dit boys en noun de ceste parole Silve cedue par quoi ils ne poeient vendre leur boys a verroie pris a grant damage de eux & de Roialme est ordeine & establi qe prohibition en ce cas soit grantee & sur ce attachement come ad este avant ces heures.

" ITEM, At the Complaint of " the said Great Men and " Commons, shewing by their " Petition, That whereas they " sell their great Wood of the " Age of twenty Years, or of " forty Years, or of greater Age, " to Merchants to their own " Profit, or in Aid of the King " in his Wars, Parsons and Vi" cars of holy Church do im" plead and draw the said Mer" chants in the Spiritual Court " for the Tithes of the said " Wood, in the Name of this " Word called *Sylva cædua*, " whereby they cannot sell their " Woods to the very Value, to " the great Damage of them and " of the Realm ;" ' it is ordained and established, That a Prohibition in this Case shall be granted, and upon the same an Attachment, as it hath been used before this Time.' (1)

45 Edw. III. c. 3. 11 Co. 48. 50 Ed. 3, f. 10. 9 H. 6, 56. Plow. 470. Cro. El. 1, 477. 736. 2 Inst. 642. Cro. Jac. 100, 133.

Regist. 44. Fitz.N.B.54.b. Rast. 489.

(1) The most important Exposition of the above Statute is contained in the Judgment of Lord Hardwicke, in the Case of Walker v. Tyrer, Gwill. 818. Tithes of Wood are due of common Right, in Cases not protected by the Statute. By the Statute, Oak, Ash, and Elm, which are regarded as Timber

No. 1.
43 Edw. III. c. 3.

by the Common Law, are exempt from Tithes, if of twenty Years' Growth, without Regard to the Use to which they may be applied; other Trees, which are not Timber generally, may be so by the Customs of particular Counties, as Beach, in Buckinghamshire; and when this Custom prevails, such Trees are in like Manner protected by the Statute, being of the above Growth, and the Age and Custom concurring, no Inquiry is allowed as to the Quality of the particular Trees; and with Respect to Trees which are clearly of a Species to be denominated Timber, the Court have declared they would presume the Trees to be above twenty Years' Growth, unless the Plaintiff demanding Tithes prove the contrary.—2 P. Wms. 606, Gwill. 357.—Wright v. Powle, Hob. 219, Gwill. 358, Note.—Gaffy v. Pindar, 2 Rol. Rep. 83. When the Trees are exempt, no Tithe is payable for the Bark, Tops, or Lops, except in particular Cases open to Frauds, as when Loppings of Timber, standing in a Copse Wood, are intermixed with the Fall of the Copse Wood.—Walton v. Tyrer, ub. sup. In Daws v. Mollins, 2 Lees, 79, it had been laid down, that if Woods, consisting chiefly of Timber Trees with Underwood intermixed, are cut down and made into Faggots promiscuously, it not being worth while to separate them, the Timber shall privilege the whole; but if the Woods are mostly Underwood, with here and there an Oak, and all are cut and made into Faggots indiscriminately, the whole shall pay. Timber Trees, having attained the requisite Growth, are exempted, although being unfit for Timber, and only fit for Fuel—and though after attaining such Growth they may be lopped every seven Years.—See Withington v. Harris, Gwill. 581.—See also Gwill. 836, and Authorities cited, Toller, 102. But if a Tree is lopped before it is of twenty Years' Growth, and afterwards periodically, the Loppings are titheable.—Broke v. Rogers, Mo. 908, Gwill. 833. If it ceases to be lopped for twenty Years successively, it is said to become Timber, and to be privileged—1 R. A. 640—Digge, p. 11, c. 4—but see Guill. 165. Tithe is payable for the Germs or Branches growing out of the Root of felled Timber Trees, of what Age soever.—Per Lord Hardwicke in Walton v. Tyrer, contradicting the opposite Position, in 2 Inst. 643.—And in the Case of Ford v. Backster, B. R. East, 1815, decided immediately before the printing of this Note, it was held, that such Germs or Branches are not privileged, notwithstanding the cutting may only take Place after a Period of twenty Years.

No. 2.

27 Henry VIII. c. 20.—For Tithes to be paid throughout this Realm.

27 H. VIII. c. 20.

This Statute is confirmed and enlarged by 2 & 3 Edw. 6. c. 13. 18 Edw. 3, stat. 3, c. 7. 45 Edw. 3. c. 3. 5 Hen. 4, c. 11.

FORASMUCH as divers Numbers of evil-disposed Persons inhabited in sundry Counties, Cities, Towns and Places of this Realm, having no Respect to their Duties to Almighty God, but against Right and good Conscience have attempted to subtract and withhold, in some Places the whole, and in some Places great Parts of their Tithes and Oblations, as well personal as predial, due unto God and Holy Church; and, pursuing such their detestable Enormities and Injuries, have attempted in late Time past to disobey, contemn and despise the Process, Laws and Decrees of the Ecclesiastical Courts of this Realm, in more temerous and large Manner than before this Time hath been seen:' For Reformation of which said Injuries, and for Unity and Peace to be preserved amongst the King's Subjects of this Realm, our Sovereign Lord the King being supreme Head on Earth (under God) of the Church of *England*, willing the spiritual Rights and Duties of that Church to be preserved, continued and maintained, hath ordained and enacted by Authority of this present Parliament, That every of his Subjects of this Realm of *England*, *Ireland*, *Wales*, and *Caleis*, and Marches of the same, according to the Ecclesiastical Laws and Ordinances of his Church of *England*, and after the laudable Usages and Customs of the Parish or

Tithes shall be paid according to the Custom of the Parish where they be due.

other Places where he dwelleth or occupieth, shall yield and pay his Tithes, Offerings and other Duties of holy Church; and that for such Subtractions of any of the said Tithes, Offerings or other Duties, the Parson, Vicar, Curate, or other Party in that Behalf grieved, may, by due Process of the King's Ecclesiastical Laws of the Church of *England*, convent the Person or Persons so offending before his Ordinary, or other competent Judge of this Realm, having Authority to hear and determine the Right of Tithes, as also to compel the same Person or Persons offending to do and yield their said Duties in that Behalf. And in case the Ordinary of the Diocese, or his Commissary, or the Archdeacon or his Official, or any other competent Judge aforesaid, for any Contempt, Contumacy, Disobedience, or other Misdemeanor of the Party Defendant, make Information and Request to any of the King's most honourable Council, or to the Justices of the Peace of the Shire where such Offender dwelleth, to assist and aid the same Ordinary, Commissary, Archdeacon, Official or Judge, to order or reform any such Person in any Cause before rehearsed; that then he of the King's said honourable Council, or such two Justices of the Peace, whereof the One to be of the *Quorum*, to whom such Information or Request shall be made, shall have full Power and Authority, by Virtue of this Act, to attach or cause to be attached, the Person or Persons against whom such Information or Request shall be made, and to commit the same Person or Persons to ward, there to remain without Bail and Mainprize, till that he or they shall have found sufficient Surety, to be bound by Recognizance or otherwise before the King's said Councellor, or Justice of Peace, or any other like Councellor, or Justice of Peace, to the Use of our said Sovereign Lord the King, to give due Obedience to the Processes, Proceedings, Decrees and Sentences of the Ecclesiastical Court of this Realm, wherein such Suit or Matter for the Premisses shall depend or be. And that every of the King's said Councellors, or two Justices of the Peace, whereof the One to be of the *Quorum*, as is aforesaid, shall have full Power and Authority, by Virtue of this Act, to take, receive, and record Recognizances and Obligations in any of the Causes above written.

No. 2. 27 H. VIII. c. 20.

The Offender in subtracting of Tithes shall be convented before the Ordinary.

The Offender shall be bound by two Justices of Peace, &c. to obey the Ordinary's Sentence.

See 4 Bur. 2095.

II. Provided alway, That this Act, or any Thing therein contained, shall not extend to any Inhabitant of the City of *London*, for or concerning any Manner of Tithe, Offering, or other Ecclesiastical Duty, grown and due, to be paid or yielden within the same City, because there is another Order made for the Payment of Tithes and other Duties within the same City.

This Act not to extend to London.

III. Provided also, That every Person and Persons, being Party or Parties to any such Suit, shall and may make and have his and their lawful Action, Demand or Prosecution, Appeals, Prohibitions, and all other their lawful Defences and Remedies in every such Suit, according to the said Ecclesiastical Laws, and Statutes of this Realm, in as ample and liberal Manner and Form as they or any of them might have had, if this Act had never been made; any Thing in this Act above written notwithstanding.

Every Person shall have his Demand and Defence according to the Laws Ecclesiastical.

IV. Provided always, and be it enacted by Authority aforesaid, That this Act for recovering of Tithes, nor any Thing therein contained, shall take Force and Effect but only until such Time as the King's Highness, and such other Thirty-two Persons which his Highness shall name and appoint for the making and establishing of such Laws as his Highness shall affirm and ratify, to be called the Ecclesiastical Laws of the Church of *England*; and after the said Laws so ratified and confirmed as is aforesaid, that then the said Tithes to be paid to every Ecclesiastical Person according to such Laws, and none otherwise.

25 H. 8. c. 19, § 7.
13 Car. 2, st. 1, c. 12, § 5.

No. 3.

P. 32 Henry VIII. c. 13.—An Act for Dissolution of Monasteries and Abbies.*

32 H. VIII. c. 13. Sec 20.

Hetley, 145. Latch, 89. Bridgm 32. 2 Roll. 152, 252.

'XX. And where divers and sundry Abbots, Priors, Abesses, Prioresses, and other Ecclesiastical Governors and Governesses of the said late Monasteries, Abbathies, Priories, Nunneries, Colleges, Hospitals, Houses of Friers, and other Religious and Ecclesiastical Houses and Places, have had, possessed and enjoyed divers and sundry Parsonages appropriated, Tithes, Pensions and Portions, and also were acquitted and discharged of and for the Payment or Payments of Tithes, to be paid out or for their said Monasteries, Abbathies, Priories, Nunneries, Colleges, Hospitals, Houses of Friers, and other Religious and Ecclesiastical Houses and Places, Manors, Messuages, Lands, Tenements and Hereditaments:' Be it therefore enacted by the Authority abovesaid, That as well the King our Sovereign Lord, his Heirs and Successors, as all and every such Person and Persons, their Heirs and Assigns, which have, or hereafter shall have, any Monasteries, Abbathies, Priories, Nunneries, Colleges, Hospitals, Houses of Friers, or other Ecclesiastical Houses or Places, Sites, Circuits, Precincts of the same, or of any of them, or any Manors, Messuages, Parsonages appropriate, Tithes, Pensions, Portions or other Hereditaments, whatsoever they be, which belonged or appertained, or which now belong or appertain unto the said Monasteries, Abbathies, Priories, Nunneries, Colleges, Hospitals, Houses of Friers, or other Religious and Ecclesiastical Houses and Places, or unto any of them, shall have, hold, retain, keep and enjoy, as well the said Parsonages appropriate, Tithes, Pensions and Portions of the said Monasteries, Abbathies, Priories, Nunneries, Colleges, Hospitals, Houses of Friers, and other Religious and Ecclesiastical Houses and Places, Sites, Circuits, Precincts, Manors, Meases, Lands, Tenements and other Hereditaments, whatsoever they be, and every of them, according to their Estates and Titles, discharged and acquitted of Payment of Tithes, as freely, and in as large and ample Manner, as the said late Abbots, Priors, Abesses, Prioresses, and other Ecclesiastical Governors and Governesses, or any of them had, held, occupied, possessed, used, retained or enjoyed the same, or any Parcel thereof, at the Days of their Dissolution, Suppression, Renouncing, Relinquishing, Forfeiting, Giving up, or coming to the King's Highness, of such Monasteries, Abbathies, Priories, Nunneries, Colleges, Hospitals, Houses of Friers, or other Religious or Ecclesiastical Houses or Places, or at the Day of the Dissolution, Suppression, Renouncing, Relinquishing, Giving up, or coming to the King's Highness of any of them; this Act or any Thing therein contained to the contrary notwithstanding.

Such Abbey Lands as before the Dissolution of them were discharged of Tithes, shall so continue

Cro. El. 206. Cro. Jac. 607. Cro Car. 265, 422. Moor, 219, pl. 356. Dyer, f. 227, pl. 60, 349, pl. 16. 2 Co. 46. 11 Co. 8, 16. Co pl. f. 451, 451.

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* The Monasteries dissolved by this Act, and intitled to Exemption from Tithes, are those of the yearly Value of £200 and upwards, there being no Exemption in Respect of the lesser Monasteries dissolved by 27 Hen. VIII. c. 28. A Catalogue of the greater Monasteries, in Respect of which Exemption may be claimed, is contained in Turner's Notitia—and from thence extracted in Burns' Ecclesiastical Law, Title Tithes, and the Appendix to Toller on Tithes.

The following View of the Law respecting such Exemption is abridged from the Treatise of Mr. Toller, Ch. VII.—

The Exemption may be in Respect, I. Of Unity of Possession by the Monastery of the Parsonage and the Land titheable—and this Exemption takes Place as well when they are in the Hands of a Tenant as when they are in

the Hands of the Owner. The Requisites to such Exemption are, that the Union must have been, 1st, founded upon legal Title; 2d, equal with Respect to the Quantity of Estate; 3d, free from the Payment of any Tithes in any Manner; 4th. immemorial, and such immemorial Possession must be proved, and is not to be presumed.—Cluvill v. Oram, Gwill. 1354—but see Ingram v. Thackstone, infra. II. In Respect of Order.—Religious Orders were, by Pope Pascal II. exempted generally from Tithes of Lands *dum propriis manibus excoluntur*. This Exemption was confined, by Pope Adrian IV. to the Orders of Cistercians, Templars, and Hospitallers, and was afterwards endeavoured, by Innocent the Third, to be extended to the Premonstratenses, but the Extension has not been allowed in this Country. By the Council of Lateran, in 1215, received as Law in England, the Exemption of religious Houses was restrained to the Lands of which they were at that Time in Possession. The Cistercians afterwards obtained Bulls for the Exemption of Lands in the Hands of Tenants. Such Exemptions were prevented for the future by Statute 2 Henry IV. c. 4—but are valid as to Privileges then existing. Lands, in Respect of which the Monasteries were entitled to Exemption, *ratione ordinis*, are exempted, although at the Time of the Dissolution they were in the Hands of Tenants, and as such titheable—Cowley v. Keys, Gwill. 1308—but it is otherwise with Respect to Lands which, previous to the Dissolution, had been granted in Tail.—Farmer v. Shereman, Hob. 248, Gwill. 431. The Exemption extends in other Cases only to Lands in the Hands of the Owners. It may be claimed by a Tenant in Tail—or by a Tenant for Life, under the Limitations of a Settlement—Hett v. Meeds, Gwill. 1515—but not by a Lessee for Life.—Adm. ibid. An absolute, and not a qualified Discharge, was presumed, in Favour of Lands, that had never paid Tithes, although belonging to a Cistercian Abbey, and never in Lease, and although Tithes had been paid for other Part of the same Farm, when in the Hands of Tenants.—Ingram v. Thackstone, Gwill. 819.

No. 3.
32 H. VIII. c. 13.

Lands exempted by the Statute are not chargeable, although they have paid Tithes ever since it passed.—Earl of Clericourt v. Lady Denton, Gwill. 363. Lands exempt under this Statute are not rendered liable by the general Provision of an inclosure Act, that Tithes should be paid from the new Inclosure, notwithstanding any Modus or Exemption in other Parts of the Parish.—Pratt v. Hopkins, 3 Bro. P. C. 512, Gwill. 704.

Lands of the Order of St. John, of Jerusalem, which came to the Crown by Stat. 32 Hen. VIII. c. 24, are exempt under the Authority of this Act.—See the several Cases cited, Toller, 175.

No. 4.

32 Henry VIII. c. 7.—For the true Payment of Tithes and Offerings.

'WHERE divers and many Persons inhabiting in sundry Counties and Places of this Realm, and other the King's Dominions, not regarding their Duties to Almighty God, and to the King our Sovereign Lord, but in few Years past more contemptuously and commonly presuming to offend and infringe the good and wholesome Laws of this Realm, and gracious Commandments of our said Sovereign Lord, than in Times past hath been seen or known, have not letted to subtract and withdraw the lawful and accustomed Tithes of Corn, Hay, Pasturages, and other Sort of Tithes and Oblations commonly due to the Owners, Proprietaries and Possessors of the Parsonages, Vicarages, and other Ecclesiastical Places of and within the said Realm and Dominions, being the more encouraged thereunto, for that divers of the King's Subjects, being lay Persons, having Parsonages, Vicarages and Tithes to them, and to their Heirs, or to them, and to their Heirs of their Bodies lawfully begotten, or for Term of Life or Years, cannot by the Order and

32 H. VIII.
This Act is confirmed and enlarged by 2 & 3 Edw 6, c. 13.
18 Ed. 3, st. 3, c. 7.
45 Ed. 3, c. 3.
5 H. 4, c. 11.

No. 4.
32 H. VIII. c. 7.

'Course of the Ecclesiastical Laws of this Realm, sue in any Ecclesiastical Court for the wrongful withholding and detaining of the said 'Tithes or other Duties, nor cannot by the Order of the Common 'Laws of this Realm have any due Remedy against any Person or 'Persons, their Heirs or Assigns, that wrongfully detaineth or withholdeth the same; by Occasion whereof much Controversy, Suit, 'Variance and Discord is like to insurge and ensue among the King's 'Subjects, to the great Detriment, Damage and Decay of many of 'them, if convenient and speedy Remedy therefore be not had and 'provided.

2 Inst. 612.

Tithes shall be paid according to the Custom of the Parish where they be due.

II. Wherefore it is ordained and enacted by our said Sovereign Lord the King, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, That all and singular Persons of this his said Realm, or other his Dominions, of what Estate, Degree or Condition soever he or they be, shall fully, truly and effectually divide, set out, yield and pay all and singular Tithes and Offerings aforesaid, according to the lawful Customs and Usages of the Parishes and Places where such Tithes or Duties shall grow, arise, come or be due; and in Case that it shall happen any Person or Persons, of his or their ungodly or perverse Will and Mind, to detain and withhold any of the said Tithes or Offerings, or any Part or Parcel thereof, then the Person or Party, being ecclesiastical or lay Person, having Cause to demand or have the said Tithes or Offerings, being thereby wronged or grieved, shall and may convent the Person or Persons so offending before the Ordinary, his Commissary, or other competent Minister, or lawful Judge of the Place where such Wrong shall be done, according to the Ecclesiastical Laws; and in every such Cause or Matter of Suit, the same Ordinary, Commissary, or other competent Minister or lawful Judge, having the Parties or their lawful Procurators before him or them, shall and may by Virtue of this Act proceed to the Examination, Hearing and Determination of every such Cause or Matter ordinarily or summarily, according to the Course and Process of the said Ecclesiastical Laws, and thereupon may give Sentence accordingly.

Cro. El. 607.
The Offender convented before the Ordinary.

The Appellant shall pay Costs of Suit to the other Party
Cro. El. 178.

III. And in Case that any of the Parties, for any Cause or Matter concerning that Suit, do appeal from the Sentence, Order and definitive Judgment of the said Ordinary, or other competent Judge, as is aforesaid, then the same Judge by Virtue of this Act forthwith upon such Appellations made, shall adjudge to the other Party the reasonable Costs of his Suit therein before expended; and shall compel the same Party Appellant to satisfy and pay the same Costs so adjudged by compulsory Process, and Censures of the said Laws Ecclesiastical, taking Surety of the other Party to whom such Costs shall be adjudged and paid, to restore the same Costs to the Party Appellant, if after the principal Cause of that Suit of Appeal shall be adjudged against the same Party to whom the same Costs shall be yielden; and so every Ordinary or other competent Judge Ecclesiastical, by Virtue of this Act, shall adjudge Costs to the other Party upon every Appeal to be made in any Suit or Cause of Subtraction or Detention of any Tithes or Offerings, or in any other Suit to be made for or concerning the Duty of such Tithes or Offerings.

The Offender shall be bound by two Justices of Peace to obey the Ordinary's Sentence.
See 4 Bur. 2005.

IV. And further, be it enacted by the Authority aforesaid, That if any Person or Persons, after such Sentence definitive given against them, obstinately and wilfully refuse for to pay their Tithes or Duties, or such Sums of Money so adjudged, wherein they be condemned for the same, that then two Justices of the Peace for the same Shire, whereof one to be of the *Quorum*, shall have Authority by this Act, upon Information, Certificate or Complaint to them made in Writing

by the said Ecclesiastical Judge that gave the same Sentence, to cause the same Party so refusing, to be attached and committed to the next Gaol, and there to remain without Bail or Mainprise till he or they shall have found sufficient Sureties to be bound by Recognizance or otherwise, before the same Justices, to the Use of our said Sovereign Lord the King, to perform the said definitive Sentence and Judgment.

No. 4.
32 H. VIII. c. 7.

V. Provided always, and be it enacted by the Authority aforesaid, That no Person or Persons shall be sued, or otherwise compelled to yield, give or pay any Manner of Tithes for any Manors, Lands, Tenements or other Hereditaments, which by the Laws or Statutes of this Realm are discharged, or not chargeable with the Payment of any such Tithes.

Lands discharged of Tithes.
Co. pl. f. 454.
2 & 3 Ed. 6, c. 13, §. 4.

VI. Provided also, and be it enacted by Authority aforesaid, That this Act nor any Thing therein contained shall in any wise bind the Inhabitants of the City of *London*, and Suburbs of the same, for to pay their Tithes and Offerings within the same City and Suburbs otherwise than they ought or should have done before the making of this Act; any Thing in this Act contained to the contrary notwithstanding.

The Inhabitants of London.
2 Co. 44.

VII. And be it further enacted by the Authority aforesaid, That in all Cases where any Person or Persons which now have, or which hereafter shall have, any Estate of Inheritance, Freehold, Term, Right or Interest, of, in or to any Parsonage, Vicarage, Portion, Pension, Tithes, Oblations or other Ecclesiastical or Spiritual Profit, which now be, or hereafter shall be made Temporal, or admitted to be, abide and go to or in Temporal Hands and Law Uses and Profits by the Law or Statutes of this Realm, shall hereafter fortune to be disseised, deforced, wronged or otherwise kept or put from their lawful Inheritance, Estate, Seisin, Possession, Occupation, Term, Right or Interest of, in, or to the same, or of, in, or to any Parcel thereof, by any other Person or Persons claiming or pretending to have Interest or Title in or to the same; that then in all and every such Case or Cases, the Person or Persons so disseised, deforced, or wrongfully kept or put from his or their Right or Possesion as is afore rehearsed, their Heirs, Wives and such other to whom such Injury and Wrong shall be done or committed, shall and may have their Remedy in the King's Temporal Courts, or other Temporal Courts, as the Case shall require, for the Recovery, Getting or obtaining of such Inheritance, Estate, Freehold, Seisin, Possession, Term, Right or Interest, by Writs original of *Præc' quod reddat*, Assise of *Novel disseisin*, *Mortdance'*, *Quod ei deforciat*, Writs of Dower, or other Writs original, as the Case shall require, to be devised and granted in the King's Court of Chancery, of every such Parsonage, Vicarage, Portion, Pension, or other Profit called Ecclesiastical or Spiritual, so to be demanded, according to the Nature and Cause of the Suit thereof, in like manner and Form as they should, ought or might have had, of or for Lands, Tenements, or other Hereditaments, in such Manner to be demanded: And that Writs of Covenant and other Writs for Fines to be levied, and all other Assurances to be had, made or conveyed, of any such Parsonage, Vicarage, Portion, Pension or other Profit called Ecclesiastical or Spiritual as is aforesaid, shall be hereafter devised and granted in the said Chancery according as hath been used for Fines to be levied, and Assurance to be had, made or conveyed, of Lands, Tenements or other Hereditaments: and that all Judgments to be given upon any of the said Writs original, so to be devised or granted of or for any the Premisses, or any of them, and all Fines to be levied and knowledged in any of the King's said Courts thereof, shall be of like Force and Effect in the Law, to all Intents and Purposes, as Judgments given, and Fines levied of Lands, Tene-

Recoveries may be had, and Conveyances made in Temporal Courts, of Tithes, as of Lands
Dyer 83, pl. 77.
Cro. El. 607, 814.
Co. Lit. 152, 2.
11 Co. 25.

Judgments given, and Fines levied in the King's Courts, of Tithes, shall be of like Force as of Lands.

No. 4. 32 H. VIII. c. 7.

ments and Hereditaments in the same Courts upon Writs original therefore duly pursued and prosecuted, albeit no such Form of Writs original out of the said Court of Chancery have heretofore proceeded or been awarded.

Remedy shall be had for Tithes and Offerings in the Spiritual Courts, and not in the Temporal. Dyer, 84, pl. 82. 27 H. 8, c. 20. 2 Co. 43.

VIII. Provided always, That this last Act shall not extend nor be expounded to give any Remedy, Cause of Action or Suit in the Courts Temporal against any Person or Persons which shall refuse or deny to set out his or their Tithes, or which shall detain, withhold or refuse to pay his Tithes or Offerings or any Parcel thereof; but that in all such Cases the Person or Party, being Ecclesiastical or Lay Person, having Cause to demand or have the said Tithes or Offerings in every such Case in the Spiritual Courts, according to the Ordinance in the first Part of this Act mentioned, and not otherwise; any Thing herein expressed to the contrary thereof notwithstanding.

No. 5.

37 Henry VIII. c. 12.—An Act for Tithes in *London.*

No. 6.

2 & 3 Edward VI. c. 13.—An Act for Payment of Tithes.

2 & 3 Edw. VI c. 13. In what Manner Tithes ought to be paid. 27 H. 8. c. 20. 32 H. 8, c. 7. 1 Roll. 13, 90, 354. 13 Co. 23, 48. Savil, 131. Godbolt, 211, pl. 30. 18 Ed. 3, st. 3, c. 7. 45 Ed. 3, c. 3. 5 H. 4. c. 11. 2 Inst. 648. March 21. 2 Bulst. 85, 183. 1 Bulst. 108.

'WHERE in the Parliament holden at *Westminster* the iv. Day of *February* in the xxvij. Year of the Reign of the late King of most famous Memory, King Henry the viij. there was an Act made concerning Payment of Tithes Predial and Personal: And also in another Parliament holden at *Westminster* the xxiv. Day of *July* in the xxxij Year of the Reign of the said late King Henry the viij. another Act was made concerning the true Payment of Tithes and Offerings; in which several Acts many and divers Things be omitted and left out, which were convenient and very necessary to be added to the same:' In Consideration whereof, and to the Intent the said Tithes may be hereafter truly paid, according to the Mind of the Makers of the said Acts, be it ordained and enacted by the King our Sovereign Lord, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That not only the said Acts made in the said xxvij. and xxxij. Years of the Reign of the said late King Henry the viij. concerning the true Payment of Tithes, and every Article and Branch therein contained, shall abide and stand in their full Strength and Virtue; but also be it further enacted by the Authority of this present Parliament, that every of the King's Subjects shall from henceforth truly and justly, without Fraud or Guile, divide, set out, yield and pay, all Manner of their predial Tithes (1) in their proper Kind as they rise and happen, in such Manner and

Every Person shall set forth and pay his predial Tithes. 2 Inst. 611. 3 Leon. 204. 1 Mod. 50. Raymond, 14. Hardress, 315. 1 Vent. 126. Carth. 361. Cro. El. 608, 621, 766. Cro. 513.

(1) This Provision relates only to predial Tithes, and therefore where the Declaration was for not setting out predial and other Tithes, as Wool, &c. and a general Verdict was given, Judgment was arrested. Selw. N. P. 1074. But the Statute extends to small Tithes as well as great. Day v. Parkwell, Moor 915.

Form as hath been of Right yielded and payed within forty Years (2) next before the making of this Act, or of Right or Custom ought to have been paid: And that no Person shall from henceforth take or carry any such or like Tithes, which have been yielded or paid within the said forty Years, or of Right ought to have been paid, in the Place or Places titheable of the same, before he hath justly divided or set forth for the Tithe thereof the tenth Part of the same, or otherwise agreed for the same Tithes with the Parson, Vicar or other Owner, Proprietory or Fermor of the same Tithes; under the Pain of Forfeiture of treble Value of the Tithes so taken or carried away. (3)

No. 6. 2 & 3 Edw. VI. c. 13.

II. And be it also enacted by the Authority aforesaid, That at all Times whensoever and as often as the said predial Tithes shall be due and at the Tithing Time of the same, it to be lawful to every Party to whom any of the said Tithes ought to be paid, or his Deputy or Servant, to view and see their said Tithes to be justly and truly set forth and severed from the nine Parts, and the same quietly to take and carry away: And if any Person carry away his Corn or Hay, or his other predial Tithes, before the Tithe thereof be set forth; or willingly withdraw his Tithes of the same or of such other Things whereof predial Tithes ought to be paid; or do stop or let the Parson, Vicar, Proprietor, Owner or other their Deputies or Farmers, to view, take and carry away (4) their Tithes as is abovesaid; by Reason whereof the said Tithe or Tenth is lost, impaired or hurt; that then upon due Proof thereof made before the Spiritual Judge or any other Judge to whom heretofore he might have made Complaint, the Party so carrying away, withdrawing, letting or stopping, shall pay the double Value of the Tenth or Tithe so taken, lost, withdrawn or carried away, over and besides the Costs, Charges and Expences of the Suit in the same: The same to be recovered before the Ecclesiastical Judge according to the King's Ecclesiastical Laws.

The Penalty for carrying of Corn or Hay before Tithe be set forth, or for letting the Parson to carry it. Co. pl. f. 161. 2 Bulst. 228, 285. 3 Bulstr. 278. Godbolt. 245, pl. 342. Moor, 528. Hob. 218 Cro. Jac. 57, 68, 70, 318 2 Roll. 54. Hetley, 123. March 57.

III. And be it further enacted by the Authority aforesaid, That all and every Person which hath or shall have any Beasts or other Cattle titheable, going, feeding or depasturing in any Waste or common Ground, whereof the Parish is not certainly known, shall pay their Tithes for the Increase of the said Cattle so going in the said Waste or Common, to the Parson, Vicar, Proprietor, Portionary, Owner or other their Farmers or Deputies of the Parish, Hamlet, Town or other Place, where the Owner of the said Cattle inhabiteth or dwelleth.

Tithe of Cattle feeding in a Waste where the Parish is not known.

IV. Provided always, and be it enacted by the Authority aforesaid, That no Person shall be sued or otherwise compelled to yield, give or pay any Manner of Tithes for any Manors, Lands, Tenements or Hereditaments, which by the Laws and Statutes of this Realm or by any Privilege or Prescription, (5) are not chargeable with the Payment

Lands discharged of Tithe by Prescription or Composition 2 Co. 44. 13 Co. 42. Co. pl. 452, 454, 457. 2 Roll. 479.

(2) It is not necessary that Tithes should appear to have been actually paid, the Presumption being in Favour of the general Liability, and the Plaintiff will recover in such Case upon a Declaration that the Tithes were yielded and *payable* within Forty Years before the Statute. Mitchell v. Walker, 5 T. R. 260. But if it is alledged that Tithes were paid within the Forty Years, Evidence must be given thereof.—Lord Mansfield v. Clarke, cited ibid. and see Hallewell v. Trapps, 2 N. R. 173.

(3) As to whether the Action can be brought for Non-payment of a customary Tithe of an Eleventh instead of a Tenth, or if it can, whether such customary Tithe should not be expressly stated in the Declaration, see Blundell v. Mawdesley, 15 E. 641.

(4) As to the Way which the Parson has a Right to use for carrying off the Tithe, see Cobb v. Selby, 2 N. R. 466.

(5) A Prescription, exempting from the Penalties of this Act, must be good in Law; and the Validity of the Custom is proper to be tried in an Action on the Statute.—Phillips v. Davies, 8 East, 178.

No. 6.
2 & 3 Edw. VI. c. 13

of any such Tithes, or that be discharged by any Composition real. 32 H. 8, c. 7, §. 5.

The Tithe of barren Heath or waste Ground
Dyer, 170.
Cro. El. 475.
Moor, 909.
Cro. Car. 208.

V. Provided always, and be it enacted by the Authority aforesaid, That all such barren Heath or Waste Ground, other than such as be discharged for the Payment of Tithes by Act of Parliament, which before this Time have lain barren and paid no Tithes by Reason of the same Barrenness, and now be or hereafter shall be improved and converted into arable Ground or Meadow, shall from henceforth, after the End and Term of seven Years next after such Improvement fully ended and determined, pay Tithe for the Corn and Hay growing upon the same; any Thing in this Act to the contrary in any wise notwithstanding. (6)

VI. Provided always, and be it enacted by the Authority aforesaid, That if any such barren, waste or heath Ground, hath before this Time been charged with the Payment of any Tithes, and that the same be hereafter improved or converted into arable Ground or Meadow; that then the Owner or Owners thereof shall, during seven Years next following from and after the same Improvement, pay such Kind of Tithe as was paid for the same before the said Improvement; any Thing in this Act to the contrary in any wise notwithstanding.

Who shall pay their personal Tithes.

VII. And be it also further enacted by the Authority aforesaid, That every Person exercising Merchandises, Bargaining and Selling, Clothing, Handicraft or other Art or Faculty, being such Kind of

(6) It is agreed that the Statute gives an Exemption with Respect to the Land here described for the Term of seven Years. For the Exposition of this Clause, see 2 Inst. 656. Stockwell v. Terry, 1 Vesey, 115, and the late Case of Warwick v. Collins, 2 M. and S. 349. It is settled that Land is not entitled to the Privilege as barren, on account of the Expence of clearing from Wood, Draining, Inclosing, or Recovery from the Sea, and that the Exemption must be founded upon the natural Inaptitude of the Soil for the Production of a Crop without an extraordinary Expence in manuring. In Hutchins v. Maughan, cited by Eyre, C. B. in Jones v. Le David, 4 Gwill. 1594. Land which, from its exposed Situation, would not grow Corn without the Expence of erecting Stone Walls to protect it from the Severity of the Climate, was held to be Exempt.

The following Extracts from Lord Ellenborough's Judgment, in Warwick v. Collins, seem to comprize the Substance of the Law upon the Subject:—"There are two Causes of unproductiveness in Land, one arising from the mere Neglect of Cultivation; the other, because the Land is in its Nature unfit for, and indisposed to receive and return the Benefits of Cultivation. The latter only is protected; all Land which has not been already cultivated by the Plow, is, to use Lord Coke's Words, (2 Inst. 656) so far *not apt for Tillage.* Something must necessarily be done; some Labour bestowed; some Expence incurred in all Cases to conquer this Inaptitude. Then comes the Question on the Limitation in the Statute, whether "it has paid no Tithes by Reason of Barrenness," (on which the Comments made on the Statute and the Cases have principally turned) in other Words, "whether it be *suâpte Naturâ sterilis,*" and this all agree must be shewn to entitle it to Exemption. It seems neither reasonable nor analogous to the common Course of Husbandry, to confine *the Inaptitude for Tillage* to such Causes only as hinder the mere Use and Passage of the Plow over it, such as the Incumbrance of Wood, of Water, or Furze and Whin; there is an ulterior Inaptitude to these in all Cases of new Land, arising from the Rankness and Foulness of the Soil; and if I may use the Expression, from its unsubdued Condition. If the Land only require the Manure and Cultivation ordinarily necessary to bring it into an apt State of Tillage, it is not *suâpte Naturâ sterilis.* Sterility *ex vi termini,* imports an ungrateful Soil: a sort of natural and constitutional Infecundity, resisting the ordinary Means properly applied to render it otherwise.

"The proper Enquiry seems to be, Whether the Land was of such a Nature as to require extraordinary Expence either in Manure or Labour to bring it into a proper State of Cultivation."

No. 6. 2 & 3 Edw. VI. c. 13.

Persons, and in such Places, as heretofore within these forty Years have accustomably used to pay such personal Tithes, or of Right ought to pay, (other than such as been common Day-Labourers) shall yearly at or before the Feast of *Easter* pay for his personal Tithes the tenth Part of his clear Gains, his Charges and Expences, according to his Estate, Condition or Degree, to be therein abated, allowed and deducted.

Handicraftsmen having used to pay Tithes.

VIII. Provided always, and be it enacted, That in all such Places where Handicrafts-Men have used to pay their Tithes within these forty Years, the same Custom of Payment of Tithes to be observed and to continue; any Thing in this Act to the contrary notwithstanding.

The Ordinary may examine him that refuseth to pay his Tithe.

IX. And be it also enacted by the Authority aforesaid, That if any Person refuse to pay his personal Tithes in Form aforesaid, that then it shall be lawful to the Ordinary of the same Diocese where the Party that so ought to pay the said Tithes is dwelling, to call the same Party before him, and by his Discretion to examine him by all lawful and reasonable Means, other than by the Parties own corporal Oath, concerning the true Payment of the said personal Tithes.

Payment of Offerings.

X. Provided always, and be it enacted by the Authority aforesaid, That all and every Person and Persons which by the Laws or Customs of this Realm ought to make or pay their Offerings, shall yearly from henceforth well and truly content and pay his or their Offerings to the Parson, Vicar, Proprietor or their Deputies or Farmers of the Parish or Parishes where it shall fortune or happen him or them to dwell or abide; and that at such four Offering-Days, as at any Time heretofore within the Space of four Years last past hath been used and accustomed for the Payment of the same, and in Default thereof to pay for their said Offerings at *Easter* then next following.

Tithe of Fish.

XI. Provided also, and be it enacted by the Authority aforesaid, That this Act or any Thing therein contained, shall not extend to any Parish which stands upon and towards the Sea-Coasts, the Commodities and occupying whereof consisteth chiefly in Fishing, and have by Reason thereof used to satisfy their Tithes by Fish; but that all and every such Parish and Parishes shall hereafter pay their Tithes according to the laudable Customs, as they have heretofore of ancient Time within these forty Years used and accustomed, and shall pay their Offerings as is aforesaid.

Payment of Tithe by Houses. Latch. 89.

XII. Provided always, and be it enacted by the Authority aforesaid, That this Act, or any Thing therein contained, shall not extend in any wise to the Inhabitants of the City of *London* and *Canterbury*, and the Suburbs of the same, ne to any other Town or Place that hath used to pay their Tithes by their Houses, otherwise than they ought or should have done before the making of this Act; any Thing contained in this Act to the contrary in any wise notwithstanding.

Suits for withholding of Tithes shall be in the Ecclesiastical Court. 1 Bulstr. 67. See 4 Bur. 2095.

XIII. And be it further enacted by Authority aforesaid, That if any Person do substract or withdraw any Manner of Tithes, Obventions, Profits, Commodities or other Duties beforementioned, or any Part of them, contrary to the true Meaning of this Act, or of any other Act heretofore made, that then the Party so substracting or withdrawing the same, may or shall be convented and sued in the King's Ecclesiastical Court, by the Party from whom the same shall be substracted or withdrawn, to the Intent the King's Judge Ecclesiastical shall and may then and there hear and determine the same according to the King's Ecclesiastical Laws: And that it shall not be lawful unto the Parson, Vicar, Proprietor, Owner or other their Farmers or Deputies, contrary to this Act, to convent or sue such

No. 6.
2 & 3 Edw. VI. c. 13.
Excommunication of the Party condemned.

Withholder of Tithes, Obventions and other Duties aforesaid, before any other Judge than Ecclesiastical. And if any Archbishop, Bishop, Chancellor, or other Judge Ecclesiastical, give any Sentence in the foresaid Causes of Tithes, Obventions, Profits, Emoluments and other Duties aforesaid; or in any of them, (and no Appeal ne Prohibition hanging) and the Party condemned do not obey the said Sentence, that then it shall be lawful to every such Judge Ecclesiastical to excommunicate the said Party so as afore condemned and disobeying; In the which Sentence of Excommunication, if the said Party excommunicate wilfully stand and endure still excommunicate by the Space of forty Days next after, upon Denunciation and Publication thereof in the Parish Church, or the Place or Parish where the Party so excommunicate is dwelling or most abiding, the said Judge Ecclesiastical may then at his Pleasure signify to the King in his Court of Chancery, of the State and Condition of the said Party so excommunicate, and thereupon to require Process *De excommunicato capiendo* to be awarded against every such Person as hath been so excommunicate.

A Copy of the Libel shall be delivered to the Judges before a Prohibition granted.
1 Leon. 286.
2 Leon. 212.
Dyer, 242.
Cro. El. 736.
Cro. Car. 208.
A Consultation granted for Default of proving a Suggestion.
Carthew, 463.
Hetley, 147.
1 Roll. 55.
2 Roll. 125
Moor, 573, pl. 788.

XIV. Be it further enacted by the Authority aforesaid, That if any Party at any Time hereafter, for any Matter or Cause before rehearsed, limited or appointed by this Act, to be sued or determined in the King's Ecclesiastical Court, or before the Ecclesiastical Judge, do sue for any Prohibition in any of the King's Courts where Prohibitions before this Time have been used to be granted, that then in every such Case the same Party, before any Prohibition shall be granted to him or them, shall bring and deliver to the Hands of some of the Justices or Judges of the same Court where such Party demandeth the Prohibition, the very true Copy of the Libel depending in the Ecclesiastical Court, concerning the Matter wherefore the Party demandeth the Prohibition, subscribed or marked with the Hand of the same Party; and under the Copy of the said Libel shall be written the Suggestion wherefore the Party so demandeth the said Prohibition: And in Case the said Suggestion, by two honest and sufficient Witnesses at the least, be not proved true in the Court where the said Prohibition shall be so granted, within six Months next following after the said Prohibition shall be so granted and awarded, that then the Party that is letted or hindred of his or their Suit in the Ecclesiastical Court by such Prohibition, shall upon his or their Request and Suit, without Delay, have a Consultation granted in the same Case in the Court where the said Prohibition was granted; and shall also recover double Costs and Damages against the Party that so pursued the said Prohibition, the said Costs and Damages to be assigned or assessed by the Court where the said Consultation shall be so granted; for which Costs and Damages the Party to whom they shall be awarded may have an Action of Debt, by Bill, Plaint or Information, in any of the King's Courts of Record, wherein the Defendant shall not wage his or their Law, nor have any Essoin or Protection allowed or admitted.

Of what Things a Judge Ecclesiastical shall hold Plea.
13 Ed. 1, st. 1, c. 5.
9 Ed. 2, st. 1, c. 1, 2, 5.
1 Ed. 3, st. 2, c. 11.
18 Ed. 3, st. 3, c. 7.
45 Ed. 3, c. 3.
2 Inst. 633.

XV. Provided always, and be it enacted by the Authority aforesaid, That this Act, or any Thing therein contained, shall not extend to give any Minister or Judge Ecclesiastical any Jurisdiction to hold Plea of any Matter, Cause or Thing, being contrary or repugnant to or against the Effect, Intent or Meaning of the Statute of *Westminster* second, the fifth Chapter, the Statutes of *Articuli cleri, Circumspecte agatis, Silva cædua,* the Treatise *De Regia prohibitione,* ne against the Statute of *Anno primo Edwardi tertii,* the tenth Chapter, or any of them, ne yet hold Plea in any Matter whereof the King's Court of Right ought to have Jurisdiction; any Thing herein contained to the contrary in any wise notwithstanding.

XVI. Provided nevertheless, where heretofore such a Custom hath been in many Parts of *Wales*, that of such Chattel and other Goods as hath been given with the Marriage of any Person, their Tithes have been exacted and levied by the Parsons and Curates in those Parts; Which Custom being dissonant from any Part of this Realm, as it seemed when the said Country of *Wales* was through civil Dissension unculted, for Want of other sufficient Profits that might otherwise grow to the Curates and Ministers there, to have been for that Time tolerable: So now the Country being well manured and husbanded, and the Tithe is duly paid there of Corn, Hay, Wool and Cheese, and of other Increase of all Manner of Cattle, as it is commonly in all other Parts of this Realm, the same Custom seems to be grievous and unreasonable, specially where the Benefices are else sufficient for the finding of the said Ministers and Curates: That it be therefore enacted by the Authority aforesaid, That from and after the first Day of *May* next coming no such Tithes of Marriage Goods be exacted or required of any Person within the said Domion of *Wales*, or Marches of the same; any Thing in this Act contained, or any other Act, Custom or Prescription had or made to the contrary hereof notwithstanding. Cok. Lit. 159. a.

No. 6. 2 & 3 Edw. VI. c. 13.

No Tithes of Marriage Goods shall be paid in Wales &c.

No. 7.

7 and 8 William III. c. 6.—An Act for the more easy Recovery of small Tithes.

FOR the more easy and effectual Recovery of small Tithes, and the Value of them, where the same shall be unduly substracted and detained, where the same do not amount to above the yearly Value of Forty Shillings from any One Person; be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all and every Person and Persons shall henceforth well and truly set out and pay all and singular the Tithes, commonly called *Small Tithes*, and Compositions and Agreements for the same, with all Offerings, Oblations and Obventions, to the several Rectors, Vicars, and other Persons, to whom they are or shall be due, in their several Parishes within this Kingdom of *England*, Dominion of *Wales*, and Town of *Berwick upon Tweed*, according to the Rights, Customs, and Prescriptions commonly used within the said Parishes respectively; and if any Person or Persons shall hereafter substract or withdraw, or any ways fail in the true Payment of such small Tithes, Offerings, Oblations, Obventions, or Compositions as aforesaid, by the Space of Twenty Days at most after Demand thereof, then it shall and may be lawful for the Person or Persons, to whom the same shall be due, to make his or their Complaint in Writing unto Two or more of His Majesty's Justices of the Peace within that County, Riding, City, Town Corporate, Place or Division where the same shall grow due; neither of which Justices of Peace is to be Patron of the Church or Chapel whence the said Tithes do or shall arise, nor any ways interested in such Tithes, Offerings, Oblations, Obventions or Compositions aforesaid.

7 & 8 W. III c. 6. Continued further for 7 Years by 10 & 11 W. III c. 15, and perpetuated by 3 & 4 Ann. c. 18. sec. 1.

Vin. V. 8, 564. Burn. V. 2, 498.

Small Tithes not paid in 20 Days after Demand, lawful to complain to Two Justices not interested.

II. And be it further enacted by the Authority aforesaid, That if hereafter any Suit or Complaint shall be brought to Two or more Justices of the Peace as aforesaid, concerning small Tithes, Offerings, Oblations, Obventions or Compositions as aforesaid, the said Justices

18 Ed. 3, st. 3, c. 7.
45 Ed. 3, c. 3
5 H. 4, c. 11.

No. 7.
7 & 8 W. III. c. 6.

are hereby authorized and required to summon, in Writing under their Hands and Seals, by reasonable Warning, every such Person or Persons against whom any Complaint shall be made as aforesaid; and after his or their Appearance, or upon Default of their Appearance, the said Warning or Summons being proved before them upon Oath, the said Justices of Peace, or any Two or more of them, shall proceed to hear and determine the said Complaint, and upon the Proofs, Evidences and Testimonies, produced before them, shall, in Writing under their Hands and Seals, adjudge the Case, and give such reasonable Allowance and Compensation for such Tithes, Oblations and Compositions so substracted or withheld, as they shall judge to be just and reasonable, and also such Costs and Charges, not exceeding Ten Shillings, as upon the Merits of the Cause shall appear just.

who may summon the Person complained of, and on Default of Appearance determine the Complaint, &c.

III. And be it further enacted, That if any Person or Persons shall refuse or neglect, by the Space of Ten Days after Notice given, to pay or satisfy any such Sum of Money, as upon such Complaint and Proceeding shall by Two or more Justices of the Peace be adjudged as aforesaid, in every such Case the Constables and Churchwardens of the said Parish, or One of them, shall, by Warrant under the Hands and Seals of the said Justices to them directed, distrain the Goods and Chattels of the Party so refusing or neglecting as aforesaid, and after detaining them by the Space of Three Days, in case the said Sum so adjudged to be paid, together with reasonable Charges for making and detaining the said Distress, be not tendered or paid by the said Party in the mean Time, shall and may make publick Sale of the same, and pay to the Party complaining, so much of the Money arising by such Sale as may satisfy the said Sum so adjudged, retaining to themselves such reasonable Charges for making and keeping the said Distress, as the said Justice shall think fit, and shall render the Overplus (if any be) to the Owner.

On Refusal to pay in 10 Days after Notice, the Constables, &c. may distrain.

IV. Provided always, and be it enacted, That it shall and may be lawful for all Justices of Peace, in the Examination of all Matters offered to them by this Act, to administer an Oath or Oaths to any Witness or Witnesses, where the same shall be necessary for their Information, and for the better Discovery of the Truth.

Justices to administer an Oath.

V. Provided also, and be it enacted, That this Act, or any Thing herein contained, shall not extend to any Tithes, Oblations, Payments or Obventions, within the City of *London*, or Liberties thereof, nor to any other City or Town Corporate where the same are settled by any Act of Parliament in that Case particularly made and provided.

Not to extend to London, &c.

VI. Provided also, and be it enacted, That no Complaint for or concerning any small Tithes, Offerings, Oblations, Obventions or Compositions, hereafter due, shall be heard and determined by any Justices of the Peace, by virtue of this Act, unless the Complaint shall be made within the Space of Two Years next after the Times that the same Tithes, Oblations, Obventions and Compositions, did become due or payable; any Thing in this Act contained to the contrary notwithstanding.

No Complaint to be heard unless made within two Years.

VII. Provided also, and be it enacted, That any Person finding him, her, or themselves aggrieved, by any Judgement to be given by any Two Justices of the Peace, shall and may appeal to the next General Quarter Sessions to be held for that County, Riding, City, Town Corporate or Division, and the Justices of the Peace there present, or the major Part of them, shall proceed finally to hear and determine the Matter, and to reverse the said Judgement, if they shall see Cause; and if the Justices then present, or the major Part of them, shall find Cause to confirm the Judgement given by the first Two Justices of the Peace, they shall then decree the same by Order of Sessions, and shall also proceed to give such Costs against the Appel-

Persons aggrieved may appeal to the Sessions

If Judgment be confirmed, Justices to give Costs, &c.

lant, to be levied by Distress and Sale of the Goods and Chattels of the said Appellant, as to them shall seem just and reasonable; and no Proceedings, or Judgement had, or to be had by virtue of this Act, shall be removed or superseded by virtue of any Writ of *Certiorari*, or other Writ out of His Majesty's Courts at *Westminster*, or any other Court whatsoever, unless the Title of such Tithes, Oblations, or Obventions, shall be in question; any Law, Statute, Custom, or Usage, to the contrary notwithstanding.

Persons complained of insisting on any Composition, &c. and giving Security to pay Costs, Justices not to give Judgment.

VIII. Provided always, and be it enacted, That where any Person or Persons complained of for substracting or withholding any small Tithes, or other Duties aforesaid, shall, before the Justices of the Peace to whom such Complaint is made, insist upon any Prescription, Composition, or *Modus decimandi*, Agreement, or Title, whereby he or she is or ought to be freed from Payment of the said Tithes, or other Dues in question, and deliver the same in Writing to the said Justices of the Peace, subscribed by him or her, and shall then give to the Party complaining reasonable and sufficient Security, to the Satisfaction of the said Justices, to pay all such Costs and Damages, as upon a Trial at Law to be had for that Purpose, in any of His Majesty's Courts having Cognizance of that Matter, shall be given against him, her, or them, in case of the said Prescription, Composition, or *Modus decimandi*, shall not upon the said Trial be allowed; that in that Case the said Justices of the Peace shall forbear to give any Judgement in the Matter; and that then and in such Case the Person or Persons so complaining shall and may be at Liberty to prosecute such Person or Persons for their said Substraction in any other Court or Courts whatsoever, where he, she, or they might have sued before the making of this Act; any Thing in this Act to the contrary notwithstanding.

Judgment to be inrolled at the next Sessions by the Clerk of the Peace, &c.

IX. And be it further enacted by the Authority aforesaid, That every Person and Persons, who shall by virtue of this Act obtain any Judgement, or against whom any Judgement shall be obtained, before any Justices of the Peace out of Sessions, for small Tithes, Oblations, Obventions or Compositions, shall cause or procure the said Judgement to be inrolled at the next General Quarter Sessions to be holden for the said County, City, Riding or Division; and the Clerk of the Peace for the said County, City, Riding, or Division, is hereby required, upon Tender thereof, to inrol the same; and that he shall not ask or receive for the Inrolment of any One Judgement any Fee or Reward exceeding One Shilling; and that the Judgement so inrolled, and Satisfaction made by paying the same Sum so adjudged, shall be a good Bar to conclude the said Rectors, Vicars, and other Persons, from any other Remedy for the said small Tithes, Oblations, Obventions or Compositions, for which the said Judgement was obtained.

Persons removing, Justices may certify the Judgment, &c.

X. And be it further enacted by the Authority aforesaid, That if any Person or Persons, against whom any such Judgement or Judgements shall be had as aforesaid, shall remove out of the County, Riding, City, or Corporation, after Judgement had as aforesaid, and before the levying the Sum or Sums thereby adjudged to be levied, the Justices of the Peace who made the said Judgement, or One of them, shall certify the same, under his or their Hands and Seals, to any Justice of Peace of such other County, City or Place, wherein the said Person or Persons shall be Inhabitants; which said Justice is hereby authorized and required, by Warrant under his Hand and Seal, to be directed to the Constables or Churchwardens of the Place, or One of them, to levy the Sum or Sums so adjudged to be levied, as aforesaid, upon the Goods and Chattels of such Person or Persons, as fully as the said other Justices might have done, if he, she, or they, had not

No. 7. 7 & 8 W. III. c. 6. removed as aforesaid; which shall be paid according to the said Judgement

XI. Provided always, and be it enacted, That no Vicar or other Person shall have Remedy to recover small Tithes, or other Dues aforesaid, which became or were due before the making of this Act, unless Complaint be made to the Justices of the Peace in Form aforesaid, before the First Day of *October*, which shall be in the Year of our Lord One Thousand Six Hundred Ninety-six.

Justices may give Costs not exceeding 10s.

XII And it is hereby declared and enacted, That the said Justices of the Peace, who shall hear and determine any of the Matters aforesaid, shall have Power to give Costs, not exceeding Ten Shillings, to the Party prosecuted, if they shall find the Complaint to be false and vexatious; which Costs shall be levied in Manner and Form aforesaid.

Double Costs.

XIII. Provided also, and be it further enacted, That if any Person or Persons shall be sued for any Thing done in Execution of this Act, and the Plaintiff in such Suit shall discontinue his Action, or be nonsuit, or a Verdict pass against him, that then, in any of the said Cases, such Person or Persons shall recover Double Costs.

Suits for Tithes not exceeding 40s. to have no Benefit by this Act.

XIV. Provided always, That any Clerk, or other Person or Persons, who shall begin any Suit for Recovery of Small Tithes, Oblations or Obventions, not exceeding the Value of Forty Shillings, in His Majesty's Court of Exchequer, or in any of the Ecclesiastical Courts, shall have no Benefit by this Act, or any Clause in it, for the same Matter for which he or they have so sued.

Act to continue three Years.

XV Provided always, and be it further enacted, That this Act shall continue for the Space of Three Years, and from thence to the End of the next Session of Parliament, and no longer. [Made perpetual 3 Ann. c. 18.]

No. 8.

7 and 8 William III. c. 34.—An Act that the solemn Affirmation and Declaration of the People called *Quakers*, shall be accepted instead of an Oath in the usual Form.

7 & 8 W. III. c. 34. 13 & 14 Car. 2, c. 1. 1 W. & M. c. 18.

'WHEREAS divers Dissenters, commonly called *Quakers*, refusing to take an Oath in Courts of Justice and other Places, 'are frequently imprisoned, and their Estates sequestred, by Process 'of Contempt issuing out of such Courts, to the Ruin of themselves 'and Families:' For Remedy thereof be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the Fourth Day of *May*, which shall be in the Year of Our Lord One Thousand Six Hundred Ninety-six, every Quaker within this Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick upon Tweed*, who shall be required upon any lawful Occasion to take an Oath, in any Case where by Law an Oath is required, shall, instead of the usual Form, be permitted to make his or her solemn Affirmation or Declaration in these Words following, viz.

Quakers to make the following Affirmation, Carthew, 448.

8 Geo. 1, c. 6. 'I *A. B.* do declare, in the Presence of Almighty God, the Witness of the Truth of what I say.'

No. 8.
7 & 8 W. III. c. 34

II. Which said solemn Affirmation or Declaration shall be adjudged and taken, and is hereby enacted and declared to be, of the same Force and Effect to all Intents and Purposes, in all Courts of Justice and other Places where by Law an Oath is required within this Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick upon Tweed*, as if such Quaker had taken an Oath in the usual Form.

which is to be of the same Force in Law as an Oath.

III. And be it further enacted by the Authority aforesaid, That if any Quaker, making such solemn Affirmation or Declaration, shall be lawfully convicted, wilfully, falsly, and corruptly to have affirmed or declared any Matter or Thing, which, if the same had been in the usual Form, would have amounted to wilful and corrupt Perjury; every such Quaker so offending shall incur the same Penalties and Forfeitures, as by the Laws and Statutes of this Realm are enacted against Persons convicted of wilful and corrupt Perjury.

Penalty on false Affirmation.

'IV. And whereas by Reason of a pretended Scruple of Conscience, Quakers do refuse to pay Tithes and Church Rates;' be it enacted by the Authority aforesaid, That where any Quaker shall refuse to pay or compound for his great or small Tithes, or to pay any Church Rates, it shall and may be lawful to and for the Two next Justices of Peace of the same County (other than such Justice of the Peace as is Patron of the Church or Chapel, whence the said Tithes do or shall arise, or any ways interested in the said Tithes) upon the Complaint of any Parson, Vicar, Farmer, or Proprietor of Tithes, Churchwarden or Churchwardens, who ought to have, receive, or collect the same, by Warrant under their Hands and Seals, to convene before them such Quaker or Quakers neglecting or refusing to pay or compound for the same, and to examine upon Oath (which Oath the said Justices are hereby impowered to administer) or in such Manner as by this Act is provided, the Truth and Justice of the said Complaint, and to ascertain and state what is due and payable by such Quaker or Quakers to the Party or Parties complaining, and, by Order under their Hands and Seals, to direct and appoint the Payment thereof, so as the Sum ordered, as aforesaid, do not exceed Ten Pounds; and upon Refusal by such Quaker or Quakers to pay according to such Order, it shall and may be lawful to and for any One of the said Justices, by Warrant under his Hand and Seal, to levy the Money thereby ordered to be paid, by Distress and Sale of the Goods of such Offender, his Executors or Administrators, rendring only the Overplus to him, her, or them, necessary Charges of distraining being thereout first deducted and allowed by the said Justice; and any Person finding him, her, or themselves aggrieved by any Judgement given by such Two Justices of the Peace, shall and may appeal to the next General Quarter Sessions to be held for the County, Riding, City, Liberty, or Town Corporate; and the Justices of the Peace there present, or the major Part of them, shall proceed finally to hear and determine the Matter, and to reverse the said Judgement, if they shall see Cause; and if the Justices then present, or the major Part of them, shall find Cause to continue the Judgement given by the first Two Justices of the Peace, they shall then decree the same by Order of Sessions, and shall also proceed to give such Costs against the Appellant, to be levied by Distress and Sale of the Goods and Chattels of the said Appellant, as to them shall seem just and reasonable; and no Proceedings, or Judgement had or to be had by virtue of this Act, shall be removed or superseded by any Writ of *Certiorari*, or other Writ out of His Majesty's Courts at *Westminster*, or any other Court whatsoever, unless the Title of such Tithes shall be in Question.

If Quakers refuse to pay Tithes, &c Justices, on stating what is due, may compel them thereto, if the Sum be under 10l.

See 1 Bur. 485.

Persons aggrieved may appeal to the Quarter Sessions, who are finally to determine.

No Judgment to be superseded by Certiorari.

No. 8. 7 & 8 W. III c. 34.

V. Provided always, That in case any such Appeal be made as aforesaid, no Warrant of Distress shall be granted until after such Appeal be determined.

Quakers not to give Evidence in criminal Causes, &c.

VI. Provided, and be it enacted, That no Quaker or reputed Quaker shall by virtue of this Act be qualified or permitted to give Evidence in any criminal Causes, or serve on any Juries, or bear any Office or Place of Profit in the Government; any Thing in this Act contained to the contrary in any wise notwithstanding.

This Act was made perpetual by 1 G. 1 st. 2, c 6, but is altered by 1 G. 1, st. 2 c. 15. sec 4. and 8 G. 1, c. 6.

VII. Provided, That this Act shall continue in Force for the Space of Seven Years, and from thence to the End of the next Session of Parliament, and no longer.

No. 9.

11 & 12 William III. c. 16.—An Act for the better ascertaining the Tithes of Hemp and Flax.

11 & 12 W. III c. 16

27 H. 8, c. 20. 3 W. & M. c. 3.

'WHEREAS an Act made in the Third Year of the Reign of his 'Majesty and the late Queen, intituled, *An Act for the better* '*ascertaining the Tithes of Hemp and Flax*, was made to continue 'but for seven Years, and to the End of the next Session of Parlia- 'liament after such Term ended, and is now expired: And whereas the said Act hath by Experience been found very useful and necessary; Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the five and twentieth Day of *March* which shall be in the Year of our Lord One Thousand Seven Hundred, all and every Person or Persons who shall sow or cause to be sown any Hemp or Flax in any Parish or Place in the Kingdom of *England*, Dominion of *Wales*, and Town of *Berwick-upon-Tweed*, shall pay or cause to be paid to every Parson, Vicar, or Impropriator of any such Parish or Place, yearly and every Year, the Sum of five Shillings, and no more, for each Acre of Hemp and Flax so sown, before the same be carried off the Ground, and so proportionably for more or less Ground so sown; for the Recovery of which Sum or Sums of Money, the Parson, Vicar, or Impropriator, shall have the common and usual Remedy allowed of by the Laws of the Land.

Ground sown with Flax or Hemp, to pay 5s. per Acre

II. Provided, That this Act, or any Thing therein contained, shall not extend to charge any Lands discharged by any *Modus Decimandi*, ancient Composition, or otherwise discharged of Tithes by Law.

Not to alter Payment of Tithes for Ground sown with Hemp or Flax between 2 Feb. 1684, and 2 Feb. 1691.

III. Provided always, That Nothing herein contained shall extend, or be construed to extend, to make any Alteration in the Right or Manner of Payment of Tithes of Flax and Hemp to any Ecclesiastical Person, Incumbent of any Parsonage, Vicarage, or Curacy, or to any Impropriator or Body Corporate, having or holding any Impropriation, for such Ground as hath at any Time since the second Day of *February* One Thousand Six Hundred Eighty-four, and before the second Day of *February* One Thousand Six Hundred Ninety-one, been sown with Flax or Hemp, and paid Tithe in Kind to such Incumbent, Impropriator, or Body Corporate respectively, but that the same shall continue and be payable and paid, as full and in such Manner as formerly; any Thing in this Act to the contrary notwithstanding.

IV. Provided, That this Law shall continue in Force for seven Years, to be accounted from the said five and twentieth Day of *March*, and from thence to the End of the next Sessions of Parliament, and no longer. [Made perpetual by 1 Geo. I. stat. 2, cap. 26, sect. 2.]

No. 9. 11 & 12 W. III. c. 16. Act to continue seven Years.

No. 10.

1 George I. Stat. 2, c. 6.—An Act for making perpetual an Act of the seventh and eighth Years of the Reign of his late Majesty King William the Third, intituled, *An Act that the Solemn Affirmation and Declaration of the People called* Quakers, *shall be accepted instead of an Oath in the usual Form*; and for explaining and enforcing the said Act in relation to the Payment of Tithes and Church-Rates; and for appointing the Form of an Affirmation to be taken by the said People called *Quakers*, instead of the Oath of Abjuration.

10.

'II. And whereas by the said Act made in the seventh Year of 'the Reign of King William the Third, a Remedy is provided for 'the Recovery of Tithes and Church-rates, where any Quaker should 'refuse to pay the same;' Be it enacted by the Authority aforesaid, That such Remedy shall be and is hereby extended, and the like Remedy shall and may be had and used against any Quaker or Quakers for the Recovering of any Tithes or Rates, or any customary or other Rights, Dues or Payments belonging to any Church or Chapel, which of Right by Law and Custom ought to be paid for the Stipend or Maintenance of any Minister, or Curate officiating in any Church or Chapel; and any two or more Justices of the Peace of the same County or Place, other than such Justice of the Peace as is Patron of any such Church or Chapel, or any ways interested in the said Tithes, upon Complaint of any Parson, Vicar, Curate, Farmer, or Proprietor of such Tithes, or any Church-warden or Chapel-warden, or other Person who ought to have, receive or collect any such Tithes, Rates, Dues or Payments, as aforesaid, are hereby authorized and required to summon in Writing, under their Hands and Seals, by reasonable Warning, such Quaker or Quakers, against whom such Complaint shall be made, and after his or their Appearance, or upon Default of Appearance, the said Warning or Summons being proved before them upon Oath, to proceed to hear and determine the said Complaint, and to make such Order therein, as in the said Act is limited or directed; and also to order such Costs and Charges, as they shall think reasonable, not exceeding ten Shillings, as upon the Merits of the Cause shall appear just; which Order shall and may be so executed, and on such Appeal may be reversed or affirmed by the General Quarter Sessions of the County or Place, with such Costs and Remedy for the same, and shall not be removed into any other Court, unless the Titles of such Tithes, Dues or Payments, shall be in Question, in like Manner as in and by the same Act is limited and provided.

1 Geo I Stat 2 c. 6, sec. 2. Clause for the Recovery of Tithes, &c. from Quakers. 7 & 8 W. III. c. 34. See 1 Bur. 485.

No. 11.

53 George III. c. 127.—An Act for the better Regulation of Ecclesiastical Courts in *England*; and for the more easy Recovery of Church Rates and Tithes.

[Inserted post Part IV. Title Ecclesiastical Courts.]

Part II. Class III.

INCLOSURE OF COMMONS.

No. 1.

20 Henry III. c. 4, (Statute of Merton.)—In what Cases Lords may approve against their Tenants. (1)

20 Hen. III. — 2 Inst. 84. 1 Roll. 365. 8 Ed. 3, 39. 7 Ed. 3, 67. Mirror, 318. Enforced by 3 & 4 Ed. 6, c. 3.

ALSO because many great 'men of *England* (which 'have infeoffed Knights and their 'Freeholders of small Tenements 'in their great Manors) have com'plained that they cannot make 'their Profit of the Residue of 'their Manors, as of Wastes, 'Woods, and Pastures, whereas 'the same Feoffees have sufficient 'Pasture, as much as belongeth 'to their Tenements; it is pro'vided and granted, That when'ever such Feoffees do bring an 'Assise of *Novel disseisin* for their 'Common of Pasture, (2) and it 'is knowledged before the Jus'ticers, that they have as much Pasture as sufficeth to their Te'nements, and that they have 'free Egress and Regress from 'their Tenement unto the Pas'ture, then let them be contented 'therewith; and they on whom 'it was complained shall go quit

ITEM, quia multi magnates Anglie, qui feoffaverunt milites & libere tenentes suos de parvis tenementis in magnis maneriis suis, questi sunt, quod commodum suum facere non potuerunt de residuo Maneriorum suorum, sicut de vastis, boscis, & pasturis, Cum ipsi feoffati habeant sufficientem pasturam, quantum pertinet ad tenementa sua; Ita provisum est & concessum, quod quicunque hujusmodi feoffati assisam Nove desseisine deferant de communa pasture sue, et coram Justiciariis recognitum fuerit quod tantam pasturam habeant, quantum sufficerit ad tenementa sua, et quod habeant liberum ingressum & egressum de tenementis suis usque ad pasturam suam, tunc inde sint contenti; & illi, de quibus conquesti fuerint, recedant quieti de hoc quod commodum suum de terris, vastis,

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(1) A Person seised in Fee of the Soil may approve, although not Lord of a Manor.—Glover v. Lane, 3 T. R. 445.

(2) The Statute gives no Power to inclose against Common of Turbary, Estovers, &c.—2 Inst. 87; nor against a Right of Tenants to dig Gravel—Duberly v. Page, 2 T. R. [illegible]—Grant v. Gunner, 1 Taunt. 435; but the Lord may inclose against Common of Pasture, although the Tenants have also Common of Turbary in the same Waste, not injuring the Turbary—Strickland v. Fawcett, Willes, 57, Comyns, 551; so if Commoners have any other Right.—Shakespear v. Pippin, 6 T. R. 741. There can be no Approver against a Grant of Common in Gross.—Fitzh. Read in Stat. Extent, Mar. 1 Taunt. 449, Note. There may be Approver against Common *sans Nombre*, to be ascertained by the greatest Number of Cattle that has actually been kept.—Anon, 4 Leon, 41.

No. 1.
20 Hen. III. c. 4

boscis, & pasturis fecerint; Si autem dixerent quod sufficientem pasturam non habeant, vel sufficientem ingressum vel egressum, quantum pertinet ad tenementa sua, tunc inquiratur veritas per assisam; Et si per assisam recognitum fuerit per eosdem, quod in aliquo fuerit impeditus eorum ingressus vel egressus, vel quod non habeant sufficientem pasturam, & sufficientem ingressum & egressum, sicut predictum est, tunc recuperent seisinam suum per visum juratorum, Ita quod per discretionem & sacramentum eorum habeant conquerentes sufficientem pasturam, & sufficientem ingressum et egressum, in forma predicta; Et disseisitores sint in misericordia domini Regis, & dampna reddant, sicut reddi d debent ante provisionem istam; Si autem recognitum fuerit per assisam, quod conquerentes sufficientem, habent pasturam, cum libero & sufficienti ingressu & egressu, ut predictum est, tunc licite faciant alii commodum suum de residuo, & recedant de illa assisa quieti.

'of as much as they have made 'their Profit of their Lands, 'Wastes, Woods, and Pastures; 'and if they alledge that they have 'not sufficient Pasture, or sufficient Ingress and Egress according to their Hold, then let the 'Truth be inquired by Assise; 'and if it be found by the Assise, 'that the same Deforceors have 'disturbed them of their Ingress 'and Egress, or that they had not 'sufficient Pasture (as before is 'said) then shall they recover 'their Seisin by view of the Inquest: so that by their Discretion and Oath the Plaintiffs shall 'have sufficient Pasture, and sufficient Ingress and Egress in 'Form aforesaid; and the Disseisors shall be amerced, and 'shall yield Damages, as they 'were wont before this Provision. 'And if it be certified by the Assise, that the Plaintiffs have sufficient Pasture, with Ingress and 'Egress, as before is said, let the 'other make their Profit of the 'Residue, and go quit of that 'Assise.' (3)

(3) As to the Lord's Remedy in Chancery, against Disturbance of his Right of Approver, see Weekes v. Slate, 2 Vern. 301.

No. 2.

13 Edward I. stat. 1, c. 46, (II Westminster.)—Lords may approve against their Neighbours. Usurpation of Commons during the Estate of particular Tenants.

13 Edw. I. stat. 1 c. 46.
1 Roll. 365.
2 Inst. 473.
20 H. 3, Stat. 1, c. 4. 11 Co 74.
4 Co. 38.
13 H. 7, f. 13.
Dyer, 47, 216, 339.
Cro. Car. 281, 440, 580.

CUM in statuto edito apud Merton concessum fuerit quod domini boscorum vastorum & pasturarum appruare se possent de boscis vastis & pasturis, illis non obstante contradictione tenentium suorum dummodo tenentes ipsi haberent sufficientem pasturam ad tenementa sua cum libero ingressu & egressu ad eandem & pro eo quod nulla fiebat mentio inter vicinum & vicinum multi domini boscorum vastorum & pasturarum hucusque impediti extiterunt per contradictionem vicino-

"WHEREAS in a Statute "made at *Merton* it was "granted that Lords of Wastes, "Woods, and Pastures, might approve the said Wastes, Woods, 'and Pastures, notwithstanding 'the Contradiction of their Tenants, so that the Tenants had sufficient Pasture to their Tenements with fi ress and Re- gress to the e; And forasmuch as no Mention was made between Neighbours and Neighbours, many Lords of Wastes, "Woods, and Pastures, have been "hindered heretofore by the Contradiction of Neighbours having

No. 2.
13 Edw. I. stat. 1, c. 46.

Lords may approve against their Neighbours, leaving them sufficient Common. Enforced by 3 & 4 Ed. 6, c 3.

7 H. 4, f. 38. Skinner, 93.

For what Cause one may approve. A Ditch or Hedge of Ground approved cast down. By 6 Geo. I c. 16, sect. 1, the Remedy of the Act is extended to the Destroyers of Trees, &c. by Night or Day, &c.

Usurpation of Common during the Estate of particular Tenants. 1 Lutw. 141, 156.

[illegible] "Right to Common in the "Wastes, Woods, or Pastures of "any Lord than the Lord's own "Tenents;" 'it is ordained, That 'the Statute of *Merton*, provided 'between the Lord and his Tenants, from henceforth shall hold 'Place between Lords of Wastes, 'Woods, and Pastures, and their 'Neighbours, saving sufficient 'Pasture to their Tenants and 'Neighbours, so that the Lords of 'such Wastes, Woods, and Pastures, may make Approvement 'of the Residue. And this shall 'be observed for such as claim 'Pasture as appurtenant to their 'Tenements. But if any do claim 'Common by special Feoffment 'or Grant for a certain Number 'of Beasts, or otherwise which 'he ought to have of common 'Right, whereas Covenant barreth the Law, he shall have such 'Recovery as he ought to have 'had by Form of the Grant made 'unto him. By occasion of a 'Windmill, Sheepcote, Deyry, 'enlarging of a Court necessary, 'or Courtelage, (1) from henceforth no Man shall be grieved by 'Assise of *Novel disseisin* for 'Common of Pasture. And where 'sometime it chanceth, that one 'having Right to approve, doth 'then levy a Dyke or an Hedge, 'and some by Night, or at another Season, when they suppose 'not to be espied, do overthrow 'the Hedge or Dyke, and it cannot be known by Verdict of the 'Assise or Jury, who did overthrow the Hedge or Dyke, and 'Men of the Towns near will not 'indict such as be guilty of the 'Fact, the Towns near adjoining 'shall be destrained to levy the 'Hedge or Dyke at their own 'Cost, and to yield Damages. 'And where one having no Right 'to Common, useth Common 'what Time an Heir is Within

rum sufficientem pasturam habentium Et quia forinsecci tenentes non habent majus jus communicandi in bosco vasto aut pastura alicujus domini quam proprii tenentes ipsius domini statutum est decetero quod statutum apud Merton provisum inter dominum & tenentes suos locum habeat decetero inter dominos boscorum vastorum & pasturarum & vicinos ita quod domini hujusmodi vastorum boscorum & pasturarum salve sufficienti pastura hominibus suis & viciniis appruare se possint de residuo. Et hoc observetur de hiis qui clamant pasturam tanquam pertinentem ad tenementa sua. Sed si quis clamat communam per speciale feoffamentum vel concessionem ad certum numerum averiorum vel alio modo quam de jure communi habere deberet cum conventio legi deroget habeat suum recuperare quale habere deberet per formam concessionis sibi facte Occasione molendini ventritii bercar' vaccar' augmentationis cur' necessar' aut curtilag' decetero non gravetur quis per assisam Nove disseisine de communa pasture. Et cum contigat aliquando quod aliquis jus habens appruare se fossatum aut sepem levaverit & aliqui noctanter vel alio tali tempore quo non credant factum suum sciri fossatum vel sepem prostraverint nec sciri poterit per veredictum assise aut jurate qui fossatum aut sepem prostraverint nec velint homines de villatis vicinis indictare de hujusmodi facto culpabiles distringantur propinque villate circumadjacentes levare fossatum aut sepem ad custum proprium & dampno restituare. Et cum aliquis jus non habens communicandi usurpet communam tempore quo heredes extiterint infra

(1) These Things are put by Way of Instance, and the Lord may erect a House for a Beast-keeper—2 Inst. 476; but he can only build a House for his own Habitation, or that of his Shepherd, and so it must be alledged.—Nevil v. Hamneston, Sid. 79.

No. 2.
13 Edw. I. stat. 1. c. 46.

etatem vel uxores sub potestate virorum suorum existentes vel pastura sit in manu tenentium in dotem per legem Anglie vel aliter ad terminum vite vel annorum vel feodum talliatum & pastura illa diu usi fuerint multi sunt in opinione quod hujusmodi pasture debent dici pertinere ad liberum tenementum & quod hujusmodi possessori competere debet actio per breve Nove disseisine si hujusmodi pastura deforcietur sed decetero tenendum est quod habentes hujusmodi ingressum a tempore quo currit breve mortis ante-cessores si antea communam non habuerunt non habeant recuperare per breve nove disseisine si fuerint deforciati.

Age, or a Woman is covert, or while the Pasture is in the Hands of Tenants in Dower, by the Courtesy, or otherwise for Term of Life, or Years, or in Fee-tail, and have long Time used the Pasture, many hold Opinion, 'that such Pastures ought to be 'said to belong to the Freehold, 'and that the Possessor ought to 'have Action by a Writ of *Novel* '*disseisin*, if he be deforced of 'such Pasture; but from hence-'forth this must be holden, that 'such as have entered within the 'Time that an Assise of *Mort-*'*dauncester* hath lien, if they had 'no Common before, shall have 'no Recovery by a Writ of *Novel* '*disseisin*, if they be deforced'

No. 3.

3 & 4 Edward VI. c. 3.—An Act concerning the Improvement of Commons and waste Grounds.

3 & 4 Ed. VI. c. 3.

Every Person bringing an Assise upon any Branch of either of the Statutes touching Approvement of Wastes, &c. shall have treble Damages.

20 H. 3, c. 4.

'WHERE in the Parliament holden at *Merton* in the Twentieth 'Year of the Reign of King HENRY the Third, it is contained, 'That for because many great Men of *England* which had enfeoffed 'Knights, and other their free Tenants of small Tenements in their 'great Manors, did complain that they might not make their Profits 'of the Residue of their Manors, as of waste Woods and Pastures, 'where the same Feoffees had sufficient Pasture, as much as belonged 'unto their Tenements, it was provided and granted, That whatsoever 'Persons so enfeoffed brought Assise of *novel Disseisin* of their Com-'mon of Pasture, and before the Justices it were recognized that they 'had as much Pasture as did suffice unto their Tenements, and that 'they had free Ingress and Egress into and from their Tenements unto 'their Pasture, that then they should therewith be contented, and 'that they upon whom they had complained should depart quiet, 'with that they might make their Profit of their Lands, Wastes, 'Woods and Pastures; and if it were said that they had not sufficient 'Pasture, or sufficient Ingress and Egress, as much as doth belong 'unto their Tenements as is abovesaid, that then the Truth thereof 'should be enquired into by Assise; and if it were recognised by the 'Assise that their Ingress and Egress were in any Thing letted by 'the same Deforciators, or that they had not sufficient Pasture, and 'sufficient Ingress and Egress as is abovesaid, that then they should 'recover their *Seisin* by View of the Jurors, so that by the Discretion 'and Oath of them, the Complainants should have sufficient Pasture, 'and sufficient Ingress and Egress in Form aforesaid; and that the 'Disseisors should be in Amerciament of the King, and should yield 'Damages as they were wont to do before the same Provision: And 'if it were recognized by the Assize, that the Complainants had suf-'ficient Pasture, with free Ingress and Egress as is above mentioned, 'That then the other might lawfully do their Profit of the Residue,

No. 3.
3 & 4 Ed. VI c. 3.

'and should go quit from the same Assise, as in the said Estatute 'more plainly appeareth:

By the Stat. 13 Ed I. st. 1. c. 46, Lords of Manors may approve against their Neighbours.

'II. And where also in the Parliament holden at *Westminster* 'after *Easter* the Thirteenth Year of the Reign of King EDWARD the 'First, it was ordained, That where in the Statute made at *Merton*, it 'was agreed that Lords of Wastes, Woods and Pastures, might ap- 'prove themselves of their Wastes, Woods and Pastures, notwith- 'standing the Gainsaying and Contradiction of their Tenants, whiles 'the same Tenants had sufficient Pasture to their Tenements, with 'free Ingress and Egress into and from the same; And for that no 'mention was made between Neighbour and Neighbour, many Lords 'of Wastes, Woods and Pastures, unto that Time were let by Con- 'tradiction or Gainsaying of Neighbours, having sufficient Pasture; 'And forasmuch as foreign Tenants have no greater Right of Com- 'moning in the Wood, Waste or Pasture of any Lord, than the proper 'Tenants of the same Lord; it was from thenceforth ordained, That 'the said Statute provided at *Merton* between the Lord and his 'Tenants should have Place from thenceforth between the Lords of 'Wastes, Woods and Pastures, and Neighbours; saving sufficient 'Pasture to their Men and Neighbours; so that the Lords of the 'same Wastes, Woods and Pastures, may approve themselves of the 'Residue; and that the same should be observed of them that claim 'Pasture as pertaining to their Tenements: But if any Man claim 'Common of Pasture by special Feoffment or Grant, to a certain 'Number of Beasts, or otherwise than of common Right he ought 'to have it, where Covenant doth abrogate the Law, he shall have 'such Recovery as he ought to have by Form of the Grant to him 'made. And that by Occasion of a Windmill, Sheephouse, Dairy, 'Augmentation or Increase of any Court necessary, or Curtilage, from 'thenceforth no Man should be grieved by Assise of *novel Disseisin* 'of Common of Pasture. And forasmuch as it hapneth sometime,

For what Causes any may approve Common.

'that some Man having Right to approve to himself, hath made or 'levied a Ditch or Hedge, and other by Night or such other Time 'when they believe their Deed should not be known, do or will cast 'down the same Ditch or Hedge, and that it cannot be known by

A Ditch or Hedge of Ground approved, cast down by Persons unknown:

'Verdict of Assise or Jury, who did cast down the same Ditch or 'Hedge, nor the Men of the next Towns will indict them that be 'guilty of the same Deeds; then the next Townships adjoining about 'the same shall be distrained, to levy or make up the same Ditch or 'Hedge at their proper Costs, and to yield Damages; as in the said 'Estatute among other Things more plainly appeareth.

A Confirmation of the aforesaid Stat. of 20 Hen. 3. c 4, and 13 Edw. I. stat. 1. c 46
Vin. V. 5, 6.

'III. And forasmuch as the aforesaid Estatutes been thought 'beneficial for the Commonwealth of this Realm of *England*;' Be it enacted by the King our Sovereign Lord, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That all and every the said Statutes, and all Branches, Clauses, Articles, Sentences, Matters and Points contained and specified in them, and every of them, now not repealed, shall from henceforth be good and effectual, and also to stand and be in their full Strength, Force and Effect.

Treble Damages in an Assise upon the said Statutes.

IV. And because that such Persons as shall bring Assise of *novel Disseisin* upon the said Estatutes or upon any of them, shall by Force of the same Estatutes recover but only single Damages, which is thought to be a small Recompence for the same: Therefore be it enacted by the Authority aforesaid, That all such Person and Persons as shall at any Time hereafter bring Assise upon any Branch or Article of the said Estatutes or any of them, and have Judgment to recover, shall have his or their Damages trebled by the Judgment of the Court where such Assise and Judgment shall be had.

'V. And where in divers Counties of this Realm there hath 'been builded upon Commons or waste Grounds, certain necessary 'Houses with Ground under the Quantity of three Acres, and not 'above three Acres enclosed to and with the same; and in some Place 'there is enclosed a Garden, Orchard or Pond, out of or in such 'Wastes or Grounds which exceed not the Quantity of two Acres, or 'thereabouts, which doth no Hurt, and yet is much Commodity to 'the Owner thereof and to others;' Be it therefore enacted by the Authority aforesaid, That the said two former Acts, nor any of them, nor any Thing in them or any of them contained, shall extend to any such House, Ground or other Thing so inclosed as is last herein before mentioned, ne shall cause any Person or Persons to lose or forfeit any Pain, Damage or Penalty for the same.

No. 3.
3 & 4 Ed. VI. c. 3.
Houses built up on Wastes with 3 Acres of Ground.
31 El. c. 7.

VI. Provided always, and be it enacted, That if any such House hath been heretofore builded upon any such waste Ground as is aforesaid, and that there be above the Number of three Acres enclosed to the same, that then the said House, and three Acres Parcel of the same Enclosure, shall still remain, stand, abide and continue in like and the same Form and Degree as it now doth; and that the Overplus of the said three Acres so enclosed as is aforesaid, shall and may be laid open by the Owner or Owners of the same Wastes; any Thing in this Act, or in any of the said former Acts to the contrary in any wise notwithstanding.

The Overplus above three Acres shall be laid open.

No. 4.

29 George II. c. 36.—An Act for inclosing by the mutual Consent of the Lords and Tenants, Part of any Common for the Purpose of planting and preserving Trees fit for Timber or Underwood; and for more effectually preventing the unlawful Destruction of Trees.

'WHEREAS by the Statute made at *Merton*, it was provided 'and granted, That Lords of Wastes, Woods and Pastures in 'which their Tenants have Common of Pasture, reserving to their 'Tenants sufficient Pasture, as much as belongeth to their Tenements, 'with sufficient Ingress and Egress to the same, may approve the Re- 'sidue of such Wastes, Woods and Pastures: And whereas by a 'Statute made in the thirteenth Year of the Reign of King EDWARD 'the Third, commonly called *The Statute of* Westminster *the Second*, 'it was ordained, That the said Statute of *Merton* should hold Place 'between Lords of Wastes, Woods and Pastures, and their Neigh- 'bours, having Common Appurtenant therein; and Provision is 'thereby made against casting down Dikes and Hedges levied by such 'as have Right so to approve: And whereas by an Act made in the 'third and fourth Year of the Reign of King EDWARD the Sixth, in- 'tituled, *An Act concerning the Approvements of Moors and Waste 'Grounds*; the said Statutes, and all Articles thereof, then not re- 'pealed, were confirmed: And whereas the said Provisions for the 'Approvement of Wastes, Woods and Pastures, have been in many 'Cases rendered ineffectual, by the Contradiction and Dissent of a 'few Persons having Right of Common in the said Wastes, Woods 'and Pastures; who under Pretence that sufficient Pasture is not re- 'served to them, disturb the Lords of such Wastes, Woods and 'Pastures, or their Assigns, in the Possession of the Ground and Soil 'so approved, and discourage them from asserting their Right to make

29 Geo. II. c. 36.
Statute of Merton.
13 Ed. 3, c. 46.
3 & 4 Ed. 6, c. 3.

No. 4.
29 Geo. II. c. 36.

'or continue such Approvement: And whereas the General Provisions made by an Act of the thirty-fifth Year of the Reign of King HENRY the Eighth, and by several other Acts of Parliament, for preserving Woods; and the particular Provisions made by two several Acts of Parliament of the twentieth Year of the Reign of King CHARLES the Second, intituled, *An Act for the Increase and Preservation of Timber within the Forest of* Dean; and the Other of the ninth and tenth Year of the Reign of King WILLIAM the Third, intituled, *An Act for the Increase and Preservation of Timber in the New Forest, in the County of* Southampton; whereby Part of the Waste Lands of the said several Forests are directed to be inclosed and kept in Severalty for the Growth and Preservation of Timber, have not been duly put in Execution: And whereas, for want of a proper Supply of Timber of the Growth of this Kingdom, a great Quantity of foreign Timber is necessarily used for building Ships and Houses, and for other Purposes; and the general Price of Timber and Wood is greatly increased: And whereas many Tracts of Waste Land, unfit for Tillage or Pasture, but capable of producing different Kinds of Trees, may conveniently be inclosed for the Growth of Timber and Underwood, to the Advantage both of the Owners of the Ground and Soil of such Wastes, and also such as have Right of Common therein; and such Inclosure will also be of public Utility;' Be it therefore enacted, by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall and may be lawful to and for his Majesty, his Heirs and Successors, and all other Owners of Wastes, Woods and Pastures, in that Part of *Great Britain* called *England*, wherein any Person or Persons, or Body or Bodies Politic or Corporate, hath or have Right of Common of Pasture, by and with the Assent of the major Part in Number and Value of the Owners and Occupiers of Tenements to which the said Right of Common of Pasture doth belong, and to and for the major Part in Number and Value of the Owners or Occupiers of such Tenements, by and with the Assent of the Owner or Owners of the said Wastes, Woods and Pastures, and to and for any other Person or Persons, or Body Politick or Corporate, and with the Assent and Grant of the Owner or Owners of such Wastes, Woods and Pastures, and the major Part in Number and Value of the Owners and Occupiers of such Tenements, to inclose and keep in Severalty, for the Growth and Preservation of Timber or Underwood, any Part of such Wastes, Woods and Pastures, for such Time, and in such Manner, and upon such Conditions, as shall be agreed by them respectively.

35 H. 8, c. 17.

20 Car. 2, c. 3.

9 & 10 W. 3, c. 36.

Proprietors of Wastes, &c. and Persons having Right of Common,

may inclose for planting and preserving Timber, &c.

II. Provided nevertheless, and be it enacted by the Authority aforesaid, That in case any Recompence shall be agreed to be given for such Inclosure, to or to the Benefit of the Owners and Occupiers of Tenements, to which the Right of Common in such Wastes, Woods and Pastures doth belong, such Recompence shall be made either by a Grant of a Share of the Profit which shall arise from the Sale of the Timber or Underwood growing on the Ground or Soil so inclosed, or by a Grant of other Lands, Tenements or Hereditaments; or by some Annuity or Rent-charge issuing out of the said Ground or Soil inclosed, or out of other Lands, Tenements or Hereditaments; or shall be paid in Money, to be placed out at Interest on publick Securities, or laid out in the Purchase of Lands, Tenements or Hereditaments, or of some Annuity or Rent-charge issuing out of Lands, Tenements or Hereditaments; and the Production of such Lands, Tenements or Hereditaments, or such Annuity or Rent-charge, or the Interest of such Money, until the same shall be laid out in such

If any Recompence be agreed to be given; in what Manner same is to be made and applied.

No. 4.
29 Geo. II. c. 36.

Purchase as aforesaid, shall be paid from Time to Time to the Overseers or Overseer of the Poor of the said Parish or Township, and shall be by them or him applied towards the Relief of the Poor of the Parish or Township where such Wastes, Woods or Pastures shall lie, and accounted for in such Manner as the Rates for Relief of the Poor are by Law directed to be accounted for; and in case the Owner or Owners of any such Wastes, Woods or Pastures, and the major Part in Number and Value of the Owners and Occupiers of the Tenements to which such Right of Common doth belong, shall jointly agree to assign and grant their respective Right and Interest in any Part of the said Wastes, Woods or Pastures, for the Purpose of making such Inclosures as aforesaid, to any other Person or Persons, or Body Politick or Corporate; and the Owner or Owners of such Wastes, Woods and Pastures, shall not have an Estate in Fee-simple therein, or shall be disabled or restrained from alienating the same, the Recompence to be paid to any such Owner or Owners, shall be either by a Grant of a Share of the Profit which shall from Time to Time arise from the Sale of the Timber or Underwood growing on the Ground or Soil so inclosed, or by a Grant of other Lands, Tenements or Hereditaments, or of an Annuity or Rent-charge issuing out of the said Ground or Soil so inclosed, or out of other Lands, Tenements or Hereditaments; such Equivalent to be held and enjoyed by the Owner or Owners of such Wastes, Woods and Pastures, and such as shall be intitled to the same in Reversion, Remainder, or Succession, in like Manner as the Estate in such Wastes, Woods or Pastures, is limited to be held and enjoyed; and in case the Inhabitants of any Parish or Township shall be willing to acquire such Right of Inclosure, for the Employment and Benefit of the Poor of the said Parish or Township, and any Recompence shall be agreed to be given for the same, it shall and may be lawful for the Overseer or Overseers of the Poor of such Parish or Township (by the Consent and Direction of the major Part of the Inhabitants thereof, assembled at a Vestry or publick Meeting to be held for that Purpose, publick Notice being first given of such intended Vestry or Meeting, in the Church or Chapel belonging to such Parish or Township, on three *Sundays* at the least before such Vestry or Meeting shall be held) to pay or purchase such Recompence out of any Monies arising from the Rates raised or to be raised, for the Relief of the Poor; and out of such Monies to pay from Time to Time such Charges and Expences as shall be necessary for inclosing and preserving such Grounds so inclosed; and such Overseers or Overseer shall from Time to Time apply the Profit which shall arise from the Sale of the Timber or Underwood growing thereon, towards the Relief of the Poor of the said Parish or Township; and shall account for the same in like Manner as he and they is and are by Law obliged to account for the Rates collected for the Relief of the Poor.

If Lords and Tenants join, &c. how Recompence is to be made to the Lord, &c.

Parish willing to purchase for Employment of their Poor,

Recompence, &c. to be paid out of Poor's Rate, &c.

III. Provided always, That every Agreement for any such Inclosure shall be in Writing, and signed by the Parties, and the same shall be registered and inrolled by the Clerk of the Peace for the County, Riding, or Division where such Wastes, Woods or Pastures, or the greater Part of them shall lie, within three Months next after the Execution of such Agreement.

Appeal.

IV. Provided also, and be it enacted, That it shall and may be lawful to and for all Persons or Bodies Politick or Corporate, who shall think themselves injured or aggrieved by such Agreement, or for any Persons in their Behalf, within six Months next after any such Agreement shall be registered and inrolled in Manner aforesaid, to make Complaint thereof by Appeal to the Justices of the Peace at any Quarter Sessions to be held for the same County, Riding or Division, who are hereby authorized and required to hear and deter-

No. 4. 29 Geo. II. c. 36.

In Case no Appeal, Agreement to stand good.

mine such Appeal, and whose Determination therein shall be final; and if no such Appeal shall be made, then the said Agreement so registered and inrolled as aforesaid shall be for ever binding to all Persons whatsoever, without any further or other Appeal.

Bodies Politick, Guardians, and Trustees, impowered to agree

V. And be it further enacted by the Authority aforesaid, That it shall and may be lawful to and for all Bodies Politick or Corporate, whether Aggregate or Sole, and all Feoffees in Trust, Executors, Administrators, Guardians, Committees or other Trustees whatsoever, for and on the Behalf of any Infants, Femes Covert, Lunaticks, Ideots or other Persons whatsover, and the Husbands of Femes Covert, who shall be seised, possessed of or interested in any such Waste, Wood or Pasture, or any Right of Common in such Wastes, Woods or Pastures, to agree to any such Inclosure; and all such Agreements so made, shall be valid to all Intents and Purposes; and such Bodies Politick or Corporate, Feoffees in Trust, Executors, Administrators, Guardians, Committees and other Trustees and Husbands of Femes Covert, shall be indemnified for what they shall so do by Virtue of this Act.

If Trees be unlawfully cut or destroyed,

Damages to be made good by the adjoining Parishes; unless, &c

VI. And be it further enacted by the Authority aforesaid, That if any Person, from and after the Time hereby limited for bringing such Appeal against any such Agreement for the Inclosure of any Part of such Wastes, Woods or Pastures, shall either by Day or by Night unlawfully cut, take, destroy, break, throw down, bark, pluck up, burn, deface, spoil or carry away, any Trees growing within any such Inclosure, without the Consent of the Owner or Owners thereof, such Owner or Owners shall have such Remedy, and have and receive such Satisfaction and Recompence of and from the Inhabitants of the Parishes, Towns, Hamlets, Villages or Places adjoining to such Inclosures, and recover such Damages against the Inhabitants of such Parishes, Towns, Hamlets, Villages or Places adjoining, and in the same Manner and Form as is directed for Dikes and Hedges overthrown by the said Act made in the thirteenth Year of the Reign of King Edward the First, unless the Offender or Offenders shall be convicted of such Offence within the Space of six Months next after the Commission thereof.

Offences to be determined by two Justices, or at the Sessions Penalty on Conviction, the same as by 6 G. I. c. 16

See farther 31 Geo II. c. 41. by which this Act is amended.

VII. And be it further enacted by the Authority aforesaid, That it shall and may be lawful to and for any two Justices of the Peace of the County, Riding, Division, City, Town, Liberty or Place, wherein any such Offence shall be committed, or for the Justices of the Peace for such County, Riding, Division, City, Town, Liberty or Place, in open Sessions, upon Complaint to them made, to cause every such Offender to be apprehended for such Trespass, and to hear and determine the same, and to inflict the like Penalty and Punishment on every Offender by them convicted, as is directed to be inflicted on Offenders by an Act made in the sixth Year of the Reign of his late Majesty King George the First, intituled, *An Act to explain and amend an Act passed in the first Year of his Majesty's Reign, intituled,* (1) An Act to encourage the planting of Timber Trees, Fruit Trees, and other Trees for Ornament, Shelter or Profit; and for the better Preservation of the same; and for the preventing the burning of Woods; and for the better Preservation of the Fences of such Woods.

Trees on commonable Grounds in like Manner, &c.

VIII. And be it further enacted by the Authority aforesaid, That if any Person, from and after the first Day of *July*, One Thousand Seven Hundred and Fifty-six, shall unlawfully cut, take, destroy, break, throw down, bark, pluck up, burn, deface, spoil or carry away any Tree growing in any Waste, Wood, or Pasture, in which any

(1) See this Act as referred to in the Chronological Table.

Person or Persons, or Body or Bodies Politick or Corporate, hath or have Right of Common, every such Offender shall and may be in like Manner convicted of such Offence, and shall incur the like Penalty. No. 4. 29 Geo. II. c. 36.

'IX. And whereas by an Act made in the ninth Year of the 'Reign of his late Majesty King GEORGE the First, intituled, *An 'Act for the more effectual punishing wicked and evil disposed Per- 'sons going armed in Disguise, and doing Injuries and Violence to the 'Persons and Properties of his Majesty's Subjects, and for the more 'easy bringing Offenders to Justice*; it is amongst other Things 'enacted, That the Inhabitants of every Hundred within that Part of '*Great Britain* called *England*, shall make full Satisfaction and 'Amends to all and every Person and Persons, their Executors and 'Administrators, for the Damages they shall have sustained or suffered 'by the cutting down or destroying any Trees which shall be done 'or committed by any Offender or Offenders against the said Act, to 'be recovered in Manner as by the Act is directed: And whereas 'Doubts have arisen whether the Provision made by the said Act 'made in the ninth Year of the Reign of his said late Majesty, has not 'repealed and annulled the Remedy given by the said Acts of the first 'and sixth Years of the Reign of his said late Majesty:' For obviating the said Doubt; Be it enacted by the Authority aforesaid, That from and after the first Day of *July*, One Thousand Seven Hundred and Fifty-six, it shall and may be lawful for any Person, or Body Politick or Corporate, to take Remedy for the before mentioned Damages either against the Parish, Town, Hamlet, Vill or Place, where any of the said Offences shall be committed, according to the Powers given by the said Acts of the first or sixth Years of his said late Majesty's Reign, or on the Hundred wherein any of the said Offences shall be committed, as to such Person, or Body Politick or Corporate shall seem most meet; any Thing in the said Act made in the ninth Year of the Reign of his late Majesty to the contrary notwithstanding.

Doubt arising on 9 Geo. I. c. 22, sec. 7, obviated, and Remedy for Damages mentioned in the said Clause, may be taken according to the Acts of 1 G. I. c. 8, and 6 G. I. c. 16.

X. And be it further enacted by the Authority aforesaid, That if any Action shall be brought against any Person for any Matter or Thing done by Virtue or in Execution of this Act, the Defendant or Defendants in every such Action shall and may plead the General Issue, and give this Act, and the special Matter or Evidence, on any Trial to be had in such Action; and if the Plaintiff or Plaintiffs shall discontinue the Action, or become nonsuit, or if Judgment shall be given against such Plaintiff, then the Defendant or Defendants, in every such Action, shall recover treble Costs of Suit.

General Issue.

Treble Costs.

No. 5.

31 George II. c. 41.—An Act to amend and render more effectual an Act passed in the twenty-ninth Year of his present Majesty's Reign, intituled, *An Act for inclosing, by the mutual Consent of the Lords and Tenants, Part of any Common, for the Purpose of planting and preserving Trees fit for Timber or Underwood; and for more effectually preventing the unlawful Destruction of Trees.*

WHEREAS by an Act made in the twenty-ninth Year of the Reign of his present Majesty, intituled, *An Act for inclosing, by the mutual Consent of the Lord and Tenants, Part of any Common, for the Purpose of planting and preserving Trees, fit for*

31 Geo. II. c. 41. Preamble, reciting several Clauses in Act 29 G. II. c. 36.

No. 5.
31 Geo. II. c. 41.

Timber or Underwood; and for more effectually preventing the unlawful Destruction of Trees; it is, among other Things, enacted, That it shall and may be lawful to and for his Majesty, his Heirs and Successors, and all other Owners of Wastes, Woods and Pastures, in that Part of *Great Britain* called *England,* wherein any Person or Persons, or Body or Bodies Politick or Corporate, hath or have a Right of Common of Pasture, by and with the Assent of the major Part in Number and Value of the Owners and Occupiers of Tenements, to which the said Right of Common of Pasture doth belong, and to and for the major Part in Number and Value of the Owners and Occupiers of such Tenements, by and with the Assent of the Owner or Owners of the said Wastes, Woods and Pastures; and to and for any other Person or Persons, or Body Politick or Corporate, by and with the Assent and Grant of the Owner or Owners of such Wastes, Woods and Pastures, and the major Part in Number and Value of the Owners and Occupiers of such Tenements, to inclose and keep in Severalty, for the Growth and Preservation of Timber or Underwood, any Part of such Wastes, Woods and Pastures, for such Time, and in such Manner, and upon such Conditions, as shall be agreed by them respectively: And whereas, it is by the said Act provided, That in Case any Recompence shall be agreed to be given for such Inclosure, to or for the Benefit of the Owners and Occupiers of the Tenements to which the Right of Common in such Wastes, Woods and Pastures, doth belong, such Recompence shall be made either by a Grant of a Share of the Profit which shall arise from the Sale of the Timber or Underwood growing on the Ground or Soil so inclosed, or by a Grant of other Lands, Tenements or Hereditaments, or by some Annuity or Rent Charge issuing out of the said Ground or Soil so inclosed, or out of other Lands, Tenements or Hereditaments, or shall be paid in Money, to be placed out at Interest on Public Securities, or laid out in the Purchase of Lands, Tenements or Hereditaments, or of some Annuity or Rent Charge issuing out of Lands, Tenements or Hereditaments; and the Produce of such Lands, Tenements or Hereditaments, or such Annuity or Rent Charge, or the Interest of such Money, until the same shall be laid out in such Purchase as aforesaid, shall be paid from Time to Time to the Overseer or Overseers of the Poor of the said Parish or Township, and shall be by them or him applied towards the Relief of the Poor of the Parish or Township where such Wastes, Woods or Pastures, shall lie, and accounted for in such Manner as the Rates for Relief of the Poor are by Law directed to be accounted for: And whereas, in many Cases, the Right of Common of Pasture in the Ground or Soil inclosed, or intended to be inclosed, may not belong to all the Owners and Occupiers of Tenements within the Parishes or Townships wherein such Wastes, Woods or Pastures, shalll lie: And whereas the Owners and Occupiers of such Tenements, to which such peculiar Right of Common doth belong, may refuse their Assent to an Inclosure, the Recompence for which is applicable to the General Relief of the Poor of the Parish, and not to them in proportion to their particular Interests; and yet they may be willing to accept a different Recompence from that which is provided by the said Act; Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same, That from and after the first Day of *August* One Thousand Seven Hundred and Fifty-eight, every Recompence to be made by Virtue of the said Act, shall be made to the Person or Persons interested in the said Right of Common, in Proportion to their respective Interest or Interests therein; and not to be paid to the Overseer or Overseers of the Poor, as is directed by the said Act.

'II. And whereas Doubts may arise whether Tenants for Life, 'or for Terms of Years, determinable upon one or more Life or Lives, 'be Owners, within the Meaning of this Act, and that of the twenty-'ninth of his present Majesty's Reign;' Be it enacted by the Authority aforesaid, That the Powers given to such Owners by this Act, and the said Act of the twenty-ninth of his present Majesty's Reign, may be executed by such Tenants for Life, or Years, during their respective Interests. No. 5. 3. Geo. II. c. 12.

III. Provided always, That Nothing done by such Tenants for Life, or Terms of Years, by Virtue of this Act, or by the Act of the twenty-ninth Year of his present Majesty's Reign, shall have Effect or Continuance after the Determination of the Estate of such Tenants for Life, or Terms of Years.

No. 6.

13 George III. c. 81.—An Act for the better Cultivation, Improvement, and Regulation, of the Common Arable Fields, Wastes, and Commons of Pasture, in this Kingdom.

'WHEREAS there are, in several Parishes and Places in this 'Kingdom, several Wastes and Commons, and several Open 'and Common Fields, which, by reason of the different Interests the 'several Land Owners and Occupiers, or Persons having Right of 'Common, have in such Wastes, Commons, and Fields, cannot be 'improved, cultivated, or enjoyed, to such great Advantage for the 'Owners and Occupiers thereof, and Persons having Right of Com-'mon, as they might be, and are capable of, if an improved Course 'of Husbandry was to be pursued, respecting such Open and Common 'Fields, in each Parish respectively, and such Wastes, or Commons 'of Pasture, were to be properly drained, or otherwise amended;' may it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in every Parish or Place in this Kingdom, where there are Open or Common Field Lands, all the Tillage or Arable Lands lying in the said Open or Common Fields shall be ordered, fenced, cultivated, and improved, in such Manner, by the respective Occupiers thereof, and shall be kept, ordered, and continued, in such Course of Husbandry, and be cultivated under such Rules, Regulations, and Restrictions, as three-fourths in Number and Value of the Occupiers of such Open or Common Field Lands in each Parish or Place, cultivating and taking the Crops of the same, and having the Consent of the Owners in Manner hereinafter mentioned, and likewise the Consent of the Rector, Impropriator or Tithe Owner, or the Lessee of either of them respectively, first had in Writing, shall, at a Meeting (in pursuance of Notice for that Purpose in Writing, under the Hands of one Third of such Occupiers, to be affixed on One of the principal Doors of the Parish Church, Chapel, or Place, where Meetings have been usually held for such Parish or Place respectively, twenty-one Days, at least, before such Meeting, specifying the Time and Place of such Meeting), by Writing under their Hands, constitute, direct, and appoint; and which Notice any of such Occupiers are hereby authorised and impowered to give. 13 Geo. III. c. 81. How arable Land shall be fenced.

No. 6.
13 Geo. III. c. 81

Rules not to be longer binding than six Years.

II. Provided always, That the Rules, Regulations, and Restrictions, so agreed upon, shall not be in Force, or binding upon any of the Parties thereto, for any longer Term than six Years, or two Rounds, according to the ancient and established Course of each Parish or Place respectively.

Field Master how to be appointed.

III. And be it further enacted by the Authority aforesaid, That at every such Meeting to be had as aforesaid, it shall and may be lawful to and for the major Part in Number and Value of the Occupiers (then present) of such Open or Common Field Lands, in each Parish or Place respectively, to elect and chuse one or more proper Person or Persons as Field Master or Field Reeve, Field Masters or Field Reeves, to superintend the ordering, fencing, cultivating, and improving, of such Open and Common Fields, and to see that the same are kept, ordered, and continued, in such a Course of Husbandry, as shall be constituted, directed, and appointed, at such Meeting, in Manner aforesaid; and that such Field Master or Field Reeve, so to be elected and chosen as aforesaid, shall continue in the said Office until the Twenty-first Day of *May*, then next following, or within three Days after, and no longer, unless he or they shall be thereto re-elected and chosen in Manner hereinafter directed.

Expences how to be defrayed.

IV. And be it further enacted by the Authority aforesaid, That all Costs, Charges, and Expences, necessary for the carrying on any such Plan of ordering, fencing, cultivating, or improving, into Execution, as shall be agreed upon in Manner aforesaid, and which shall, at any Meeting to be held after six Days Notice having been given in Manner herein before directed, by the major Part in Number and Value of the Occupiers aforesaid then present, be deemed common Expences, and, for the general Benefit of the said Occupiers, shall be borne, paid, and defrayed, proportionably by all the Occupiers of such Open and Common Field Lands, according to the Value of the Lands and Grounds each Person or Persons shall have in such Open and Common Field Lands; and for the raising the same, one or more Assessment or Assessments, upon all and every the Occupiers of Common Field Lands in each Parish respectively, shall be made, levied, and collected, by such Person and Persons, and allowed in such Manner, as such Majority of the Occupiers of such Open and Common Field Lands, at such Meeting to be had as aforesaid, shall direct and appoint in that Behalf; and the Money thereby raised shall be employed and accounted for, according to the Orders and Directions of such Majority of the Occupiers of such Common Field Lands, for and towards the better Cultivation of the said Common Field Lands, from Time to Time, as Need shall require; and the said Assessments shall, by virtue of a Warrant under the Hand and Seal of one Justice of Peace of the County wherein such Common Field Lands shall lie, be levied by Distress and Sale of the Goods and Chattels of every Person so assessed and not paying the same, within ten Days after Demand, rendering the Overplus of the Value of the Goods so distrained (if any) to the Owner or Owners of such Goods and Chattels, after deducting the Costs and Charges of taking and making such Distress and Sale.

Occupiers of Common Field Lands in every Parish how to assemble and elect Field Reeves.

V. And be it further enacted by the Authority aforesaid, That it shall and may be lawful to and for the Occupiers of Open and Common Field Lands, in any Parish or Place where any Rules, Orders, or Regulations, shall have been agreed upon, for the ordering, fencing, cultivating, or improving of such Lands, in pursuance of this Act, and they are hereby required to meet and assemble at some convenient Place, yearly, and every Year, on the twenty-first Day of *May*, or within three Days after, in pursuance of six Days' Notice to be given of the Time and Place of such Meeting by One-third of the Occupiers,

No. 6.
13 Geo. III c. 81.

in Manner aforesaid, then and there to elect and chuse one or more proper Person or Persons to be the Field Master or Field Reeve, Field Masters or Field Reeves, for the Year ensuing; and that such Person or Persons who shall, by the major Part of the Occupiers of the said Lands, present at such Meeting, be chosen Field Master or Field Reeve, Field Masters or Field Reeves, to superintend the ordering, fencing, cultivating, and improving the said Common Field Lands, and to see that the same are cultivated according to the Rules, Orders, and Regulations agreed upon at the General Meeting for that Purpose, and shall continue in the said Office for one whole Year, unless he shall die, or be removed, by Virtue of the Power and Authority herein after given in that Behalf.

VI. Provided always, and be it enacted by the Authority aforesaid, That if any Field Master or Field Reeve, so to be chosen in pursuance of this Act, shall, within the Year in which he shall be so chosen, refuse, or neglect to attend the said Business, or shall die, or remove to an inconvenient Distance, or become Bankrupt, or have Execution against his Body or Goods, or by Sickness or otherwise be rendered incapable of executing his said Office; that then, and in either of the said Cases, it shall and may be lawful to and for the Occupiers of the said Lands (after six Days' Notice for that Purpose to be given in Manner aforesaid, one other fit and proper Person to be the Field Master or Field Reeve for the Remainder of that Year, in the Place and Stead of the former Field Master or Field Reeve falling under either of the Descriptions aforesaid.

Occupiers at Meetings, to settle the Time of opening Common Field Lands.

VII. And be it further enacted by the Authority aforesaid, That it shall and may be lawful to and for Three-fourths in Number and Value of the Occupiers of Open and Common Field Lands, present at any Meeting to be held in pursuance of fourteen Days' Notice at least, previous to the usual Time of opening such Common Field Lands, to be given for that Purpose, in Manner aforesaid, to postpone the opening such Common Field Lands for such reasonable Time as at such Meeting shall be thought necessary by such Majority as aforesaid, and to settle and determine how long such Common Fields shall continue open, and to limit and settle the Number of Cattle each Occupier in such Parish or Place shall respectively turn on such Common Fields, in due Proportion to the Stint or established Usage in such Parish or Place.

Cottagers not to be excluded Right of Common.

VIII. Provided always, nevertheless, and be it enacted by the Authority aforesaid, That Nothing in this Act contained shall be construed to extend to exclude any Cottager, or other Person or Persons whomsoever, having Right of Common, and having no Land in any of the said Common Fields, from having and enjoying his or their Right of Common, in as full and ample Manner as he could and might have enjoyed the same before the passing of this Act, unless such Cottager, or other Person, shall, at any Meeting to be held by the Occupiers of such Common Field Lands in Manner aforesaid, consent or agree, in Writing, to a Composition for such Right, by an annual Payment, or other annual Advantage or Compensation, or to a Limitation thereof; in which Case such Consent and Agreement shall be binding and conclusive upon every such Person so agreeing, his Heirs and Assigns, Tenants and Occupiers, until such Time as the Rules, Orders, and Regulations, for the ordering, fencing, cultivating, and improving of the said Common Field Lands, existing at the Time of giving such Consent, shall expire.

How Common Field Lands may be enjoyed differently by Occupiers.

IX. Provided always, nevertheless, and be it further enacted by the Authority aforesaid, That if the Occupiers of the said Common Field Lands shall, at Times when the said Fields have been usually enjoyed in Common, consent and agree not to depasture the same in

No. 6. 13 Geo. III. c. 81.

Common, and shall allot and set apart what shall be deemed by a Majority of such Cottagers who shall not have agreed to compound for or limit their Right of Common, as aforesaid, a sufficient and equivalent Common for such Cottagers and other Persons as aforesaid, to be enjoyed exclusively by them; that then, and in such Case, such Cottagers and other Persons shall not use, exercise, or enjoy their Right of Common, over such Parts of the said Common Field Lands, as are not used in common by the Occupiers thereof, but only over such Part thereof as shall for such Time be allotted them for that Purpose, and set apart as aforesaid; any Law, Usage, or Statute to the contrary notwithstanding.

Saving of Right to separate Sheep Walks, &c.

X. Provided always, and be it enacted by the Authority aforesaid, That Nothing herein contained shall exclude any Person or Persons seised or possessed of a separate Sheep Walk, or Pasture of Cattle, in or over all or any of the Common Field Lands in any Parish or Place, or in or over any Part thereof, from using, exercising, and enjoying such Right, in as full and ample Manner, to all Intents and Purposes, as he might or could have enjoyed the same before the passing this Act, unless such Person or Persons, having such Right as aforesaid, shall consent or agree in Writing at any Meeting of Occupiers, to be held as aforesaid, to a Composition for the same, or a Limitation thereof; in which Case, every such Consent and Agreement shall be binding and conclusive upon every Person so agreeing, and upon every other Person coming to the Possession of such Sheep Walk, or Pasture for Cattle, by Descent, or otherwise, until such Time as the Rules, Orders, and Regulations, for the Cultivation of the said Common Field Lands, existing at the Time of entering into such Agreement, shall expire.

Balks, &c. with Consent of the Lords of Manors, &c. may be ploughed

'XI. And whereas Balks, Slades, or Meers, which may be 'waste, do often lie very inconveniently interspersed amongst the 'arable Lands in Common Field,' be it further enacted by the Authority aforesaid, That it shall and may be lawful to and for any Person or Persons whomsoever, having Land in any Open or Common Fields adjoining to any such Balks, Slades, or Meers, being Waste, with the Consent of the Lord or Lords, Lady or Ladies, of the respective Manors wherein such Balks, Slades, or Meers do lie, and likewise of the Person or Persons who may have a separate Sheep Walk in the said Fields, and with the Consent of Three-fourths in Number and Value of the Occupiers of such Common Field Lands, to be signified at any Meeting to be held in Manner aforesaid, to plough up any of the said Balks, Slades, or Meers, and convert the same into Tillage, under the Regulations to be settled as aforesaid.

XII. Provided always, nevertheless, and be it enacted, That no Balk or Meer, that has heretofore been used as a publick Road, or as a private Road, by any Person or Persons, to or from his or their own House or Lands, be so ploughed up.

Regulations to be observed by Persons having a Licence to plough Balks, &c.

XIII. Provided also, and be it further enacted by the Authority aforesaid, That all and every Person and Persons, who shall have Licence in Manner aforesaid, to plough up and convert into Tillage, any Balk, Slade, or Meer, shall, before he or they begin to plough up the same, lay down, in an husband-like Manner, under the Direction of the Field Master or Field Reeve for the Time being, in a more convenient Part of the said Field, as much of his or their own Land as shall be equal in Value to the Land he or they shall so have Licence to plough as aforesaid; and that such Land so laid down shall be Common Land, and so continue until the Regulations then existing for cultivating such Common Field Lands shall expire.

Boundary Stones may be erected.

XIV. Provided also, and be it further enacted by the Authority aforesaid, That the Person or Persons ploughing any such Balk, Slade,

or Meer, shall, by proper Bound Stones, sufficiently mark and distinguish the several Lands ploughed, and the several Lands laid down in lieu thereof, so that the Property thereof, and each Person's Right therein, may be clearly known and ascertained.

No. 6.
13 Geo. III c. 81.

Lords of Manors, &c. with Consent may lease a twelfth Part, &c.

XV. And be it further enacted by the Authority aforesaid, That it shall and may be lawful to and for the Lord or Lords, Lady or Ladies, of any Manor, with the Consent of Three-fourths of the Persons having Right of Common upon the Wastes and Commons within his, her, or their Manor, at a Meeting to be held after fourteen Days Notice, such Notice to be given in Manner herein before directed by the Lord or Lords, Lady or Ladies, of the Manor, or their Agent respectively, at any Time or Times, to demise or lease, for any Term or Number of Years, not exceeding four Years, any Part of such Wastes and Commons, not exceeding a Twelfth Part thereof, for the best and most improved yearly Rent that can by publick Auction be got for the same; and that the clear Net Rents reserved to the Lord or Lords, Lady or Ladies, his, her, or their Heirs, Executors, Administrators, or Assigns, by any Lease or Leases to be granted as aforesaid, shall be by him, her, or them, and the major Part of his, her, or their Tenants, applied in the draining, fencing, or otherwise improving of the Residue of such Wastes and Commons.

Assessments to be levied for the improving of Wastes where there are stinted Commons

XVI. Provided always, nevertheless, and be it enacted by the Authority aforesaid, That in every Manor where there are stinted Commons, in lieu of demising or leasing Part thereof, one or more Assessment or Assessments upon the Lord or Lords, Lady or Ladies, of such Manor, and the Persons being Owners or Occupiers of such Commons, or their Agents or Managers, shall or may, at their Option, be made, levied, and collected, by such Person and Persons, and allowed in such Manner as the Lord or Lords, Lady or Ladies, of such Manor, and the major Part in Number and Value of the Owners or Occupiers of such Commons, present at a Meeting to be held within the said Manor, in pursuance of fourteen Days Notice to be given by the Lord or Lords, Lady or Ladies, or his, her, or their Agent, in Manner aforesaid, of the Time and Place of Meeting for that Purpose, shall direct and appoint in that Behalf; and the Money thereby raised shall be employed and accounted for, according to the Orders and Directions of the said Lord or Lords, Lady or Ladies, and such Majority of the Owners or Occupiers, as aforesaid, in the Improvement of such Commons, from Time to Time, as Need shall require; and the said Assessments shall, by virtue of a Warrant under the Hand and Seal of one Justice of the Peace, be levied by Distress and Sale of the Goods and Chattels of every Person so assessed, and not paying the same within ten Days after being demanded, rendering the Overplus of the Value of the Goods so distrained (if any) to the Owner and Owners thereof, the necessary Charges of making such Distress and Sale being first deducted.

Stinted Commons to be opened at a certain Time, &c.

'XVII. And whereas there are, in many Parts of this Kingdom, 'certain stinted Commons of Pasture which are never enjoyed in 'Severalty, but which are at certain Times shut up for the better 'Growth of the Pasture, and opened on certain fixed Days, from 'which, in particular Circumstances and Seasons, great Inconveni'encies do and may arise;' be it enacted by the Authority aforesaid, That it shall and may be lawful for the major Part in Number and Value of the Owners and Occupiers of such Common Pastures, present at a Meeting to be held after six Days Notice at least given, in Manner herein before directed, with the Consent of the Lord or Lords, Lady or Ladies, of the Manor, or his, her, or their Steward or Agent, to postpone the opening of the said Common Pastures for a Time not exceeding Twenty-one Days.

No. 6.
13 Geo. III. c. 81.

'XVIII. And whereas there are in many Places Common 'Pastures, with stinted or limited Rights of Common therein, which 'are open the whole Year, and it would be attended with great Ad-'vantages to the Commoners to shut up and unstock the same at 'particular Seasons;' be it enacted by the Authority aforesaid, That it shall and may be lawful to and for Two-thirds in Number and Value of such Commoners, at a Meeting to be holden after fourteen Days Notice given in Manner herein-before directed, with the Consent of the Lord or Lords, Lady or Ladies, of the Manor or Manors in which such Commons are situated, his, her, or their Steward or Stewards, Agent or Agents, to direct, order, and fix the Time when such Common Pastures shall be broke or depastured, and when the same shall be shut up and unstocked; such Orders to continue in Force for one whole Year, and no longer.

Two-thirds of Commoners, with Consent, &c. may direct the opening and shutting of Common Pastures, &c.

XIX. Provided nevertheless, That a Portion of such Common Pastures shall be separated and set apart for the Use of such Commoners exclusively as shall not consent to such Regulation, and the Portion so set apart shall be adjudged by a Majority of such Commoners, not consenting as aforesaid, an Equivalent for their Rights of Common.

'XX. And whereas many stinted Common Pastures in this 'Kingdom are fed and depastured by Horses, Beasts, or Neat Cattle, 'and in many Instances it would tend to the Improvement of such 'Common Pastures, and to the better Manuring and Cultivation of 'the Arable Lands in Common Fields, or otherwise, to which such 'Common Pastures may belong, if the same were fed with Sheep;' be it therefore enacted by the Authority aforesaid, That it shall and may be lawful to and for the major Part in Number and Value of the Persons having Right of Common in such Common Pastures, at any Meeting to be held in pursuance of Notice, in Writing, under the Hands of a major Part of such Owners and Occupiers of such Common Pastures, or Persons having Right of Common therein, to be affixed on the principal Door of the Parish Church of the Parish where such Common Pastures shall lie, or of the nearest Parish Church where such Lands shall lie in an extra-parochial Place, ten Days at least previous to such Meeting, specifying the Time and Place, and Intent of such Meeting, by Writing under their Hands, to alter and change the Manner and Custom of feeding and depasturing such Common Pastures, so far as instead of Horses, Cows, and other Cattle, to allow the same to be fed and depastured with Sheep, at the Option of each Person respectively having Right of Common; and to limit and stint the Number of Sheep each such Person, having Right of Common in such Common Pastures, shall respectively feed and depasture thereon, in due Proportion to their respective Stints or Rights.

Persons having Right of Common may depasture Sheep instead of other Cattle.

'XXI. And whereas the Improvement of the Breed of Sheep is 'a Matter of great national Importance, and the turning of Rams 'upon Wastes and open Common Fields at certain Times of the Year 'has been found to be very prejudicial;' be it therefore enacted by the Authority aforesaid, That no Ram shall be turned upon, or be suffered to remain upon, any Wastes or Common Fields, between the Twenty-fifth Day of *August* and the Twenty-fifth Day of *November* in every Year.

Rams.

'XXII. And whereas several of the Owners and Proprietors of 'Wastes, Commons, and Common Field Lands, may, at the Time of 'any Meeting to be held in pursuance of this Act, be incapable, 'through various Impediments, of entering into any of the Agree-'ments hereby authorised to be made, for the better ordering, fencing, 'cultivating, and improving of Common Arable Fields, Wastes, and

'Commons of Pasture, in this Kingdom, without the Aid and Authority of Parliament;' be it therefore further enacted, That it shall and may be lawful to and for the Husbands, Guardians, Trustees, Committees, or known Agent or Receiver of any Owner and Proprietor of Wastes, Commons, and Common Field Lands, and of any Person having a Right or Interest therein, being under Coverture, Minors, Lunaticks, or beyond the Seas, and for every or any of them for the Time being; and also to and for all and every or any of the said Owners and Occupiers, being Tenants in Tail, Tenants by the Courtesy of *England*, or Tenants for Life only, and to and for every or any of them respectively for the Time being, to enter into, and sign any Agreement to be made in pursuance of this Act.

No. 6. 13 Geo. III. c. 81.

Persons formerly under Disability, under this Act, may sign Agreements.

XXIII. Provided also, and be it further enacted by the Authority aforesaid, That no Rector or Tithe Owner, in Right of his Rectory, Vicarage, or Curacy, or the Lessee of either of them respectively, who shall agree for or let his Tithes of the said Common Field Lands, during the said Term of six Years, or any Part thereof, shall receive any Fine, Foregift, Gratuity, or Compensation whatever, other than by equal Half-yearly or yearly Payments

Rectors or Tithe Owners, not to receive Gratuity for letting Tithes, &c.

XXIV. And be it further enacted, That every Agreement so entered into in pursuance of this Act, shall be good, valid, and effectual in the Law, for the Purposes thereby intended, notwithstanding the Want of legal Title in the said Owner or Owners, or in the said Husbands, Guardians, Trustees, Committees, Agents, or Receivers, or in the Persons acting as such, or in the said Tenants in Tail, Tenants by the Courtesy of *England*, or Tenants for Life only, any Settlement or Settlements, Will or Wills, to the contrary in any wise notwithstanding.

All Agreements made to be valid.

XXV. Provided always, and be it enacted by the Authority aforesaid, That no Consent of any Occupier of Lands in such Common Arable Fields, or of a separate Sheep Walk therein, to any such first Agreement, for the ordering, fencing, cultivating, and improving of such Common Fields, to be made by the Authority of or in pursuance of this Act, shall be good and valid, unless such Occupier shall, at the Time of entering into such Agreement, produce a written Authority for that Purpose, under the Hand of the Owner or Proprietor, Guardian or Trustee; or in case of such Owner not being a Minor, and being in Parts beyond the Seas, of the known Agent of such Owner.

Consent of Occupiers not valid, without written Authority, &c.

XXVI. And be it further enacted by the Authority aforesaid, That if any Owner or Occupier of any Common Field Lands, or of any Part thereof, for the better Cultivation whereof any Rules and Regulations shall have been agreed upon, in pursuance of the Powers and Authorities given by this Act, shall not conform to such Rules and Regulations, or shall wilfully deviate therefrom in any Respect whatsoever, that then, and in such Case, it shall and may be lawful to and for any Owner or Owners, or Occupier or Occupiers, of any Part of such Common Field Lands, who may have been damnified by a Breach of the Regulations aforesaid, to bring one or more Action or Actions of Trespass, or upon the Case, in any of his Majesty's Courts of Record at *Westminster*, against the Person or Persons so offending; and if in any such Action, so to be brought as aforesaid, a Verdict shall be given for the Plaintiff, or he shall recover Judgement by Default; that then, and in such Case, the Party or Parties so offending shall answer to the Party grieved all such Damages as shall be recovered in such Action, together with Double Costs of Suit.

Actions may be brought at Westminster.

XXVII. Provided, That nothing in this Act contained shall prevent, or extend to prevent, any Person or Persons from inclosing all or any Part or Parts of his, her, or their Land, to and for his, her,

No. 6.
13 Geo. III. c. 81.

or their own Use or Benefit, such Person or Persons having full Power or Right so to do.

Saving all Rights, &c.

XXVIII. Saving always to the King's most Excellent Majesty, his Heirs and Successors, and to all and every Lord or Lords, Lady or Ladies, of any Manor or Manors, and to all and every other Person and Persons, Bodies Politick or Corporate, his, her, and their Heirs, Successors, Executors, and Administrators (other than and except the respective Persons, their Heirs, Successors, Executors, and Administrators, who may, in consequence of this Act being duly carried into Execution, become subject to the Provisions and Regulations thereby authorised to be made), all such Estate, Interest, and Rights, as they, every, or any of them had or enjoyed in and over the said Common Arable Fields, Wastes, and Commons of Pasture, before the passing of this Act, or could or might have had and enjoyed in case the same had not been made.

No. 7.

41 George III. c. 109.—An Act for consolidating in one Act certain Provisions usually inserted in Acts of Inclosure; and for facilitating the Mode of proving the several Facts usually required on the passing of such Acts. [2d *July*, 1801.]

41 G. III c. 109

'WHEREAS, in order to diminish the Expence attending the 'passing of Acts of Inclosure, it is expedient that certain 'Clauses usually contained in such Acts should be comprized in one 'Law, and certain Regulations adopted for facilitating the Mode of 'proving the several Facts usually required by Parliament on the 'passing of such Acts; may it therefore please your Majesty that it 'may be enacted;' and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That no Person shall be capable of acting as a Commissioner in the Execution of any of the Powers to be given by any Act hereafter to be passed for dividing, allotting, or inclosing any Lands or Grounds, except the Power of signing and giving Notice of the first Meeting of the Commissioner or Commissioners for executing any such Act, and of administering the Oath or Affirmation herein-after directed, until he shall have taken and subscribed the Oath or Affirmation following:

No Person shall act as a Commissioner under any future Inclosure Act, (except signing Notice of first Meeting and administering Oath) until he shall have taken the Oath herein prescribed.

'I *A. B.* do swear [*or*, being one of the People called *Quakers*, do 'solemnly affirm], That I will faithfully, impartially, and ho-'nestly, according to the best of my Skill and Ability, execute and 'perform the several Trusts, Powers, and Authorities vested and re-'posed in me as a Commissioner, by virtue of an Act for [*here insert* '*the Title of the Act*] according to Equity and good Conscience, and 'without Favour or Affection, Prejudice or Partiality, to any Person 'or Persons whomsoever. So help me GOD.'

Oaths & Appointment of new Commissioners, shall be inrolled with the Award, and a Copy shall be Evidence.

Which Oath or Affirmation it shall be lawful for any one of the Commissioners, where more than one shall be appointed by any such Act, or any one Justice of the Peace for the County within which the said Lands or Grounds shall be situated, where only one Commissioner shall be so appointed, to administer, and they are hereby respectively required to administer the same; and the said Oath or Affirmation,

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so to be taken and subscribed by each Commissioner, and also the Appointment of every new Commissioner, shall be annexed to and inrolled with the Award of any Commissioner or Commissiones, and a Copy of the Inrolment thereof shall be admitted as legal Evidence.

Commissioners declining to act shall give Notice to the others:
No Commissioner shall purchase Lands within the Parish where Inclosure is made, (till five Years after their Award.)

II. And be it further enacted, That every Person appointed a Commissioner in or by virtue of any such Act, who shall refuse or decline to act as such, shall forthwith give Notice in Writing to the other Commissioner or Commissioners of his Intention to refuse or decline acting as a Commissioner: Provided always, That no such Commissioner shall be capable of being a Purchaser of any Part or Parts of the Lands, Tenements, or Hereditaments within any Parish in which the Lands and Grounds intended to be inclosed are situate, either in his own Name, or in the Name or Names of any Person or Persons, until five Years after the Date and Execution of the Award to be made by any such Commissioner or Commissioners.

Commissioners shall inquire into the Boundaries of Parishes, and if not sufficiently ascertained, they shall fix them, giving previous Notice of their Intention so to do.

III. 'And whereas Disputes or Doubts may arise, concerning 'the Boundaries of Parishes, Manors, Hamlets, or Districts, to be 'divided and inclosed, and of Parishes, Manors, Hamlets or Districts, 'adjoining thereto;' be it therefore enacted, That the Commissioner or Commissioners appointed in or by virtue of any such Act shall, and he or they is and are hereby authorized and required, by Examination of Witnesses upon Oath or Affirmation (which Oath or Affirmation any one of such Commissioners is hereby empowered to administer), and by such other legal Ways and Means as he or they shall think proper, to inquire into the Boundaries of such several Parishes, Manors, Hamlets, or Districts; and in case it shall appear to such Commissioner or Commissioners that the Boundaries of the same respectively are not then sufficiently ascertained and distinguished, such Commissioner or Commissioners shall, and he or they is and are hereby authorized and required to ascertain, set out, determine, and fix the same respectively; and after the said Boundaries shall be so ascertained, set out, determined, and fixed, the same shall and are hereby declared to be the Boundaries of such Parishes, Manors, Hamlets, or Districts: Provided always, That such Commissioner or Commissioners (before he or they proceed to ascertain and set out the Boundaries of such Parishes, Manors, Hamlets, or Districts) shall, and he or they is and are hereby required to give publick Notice, by Writing under his or their Hands, to be affixed on the most publick Doors of the Churches of such Parishes, and also by Advertisement to be inserted in some Newspaper to be named in such Act, and also by Writing to be delivered to or left at the last or usual Places of the Abode of the respective Lords or Stewards of the Lords of the Manors in which the Lands and Grounds to be inclosed shall be situate, and of such adjoining Manor or Manors, ten Days at least before the Time of setting out such Boundaries, of his or their Intention to ascertain, set out, determine, and fix the same respectively; and such Commissioner or Commissioners shall, within one Month after his or their ascertaining and setting out the same Boundaries, cause a Description thereof in Writing to be delivered to or left at the Places of Abode of one of the Churchwardens or Overseers of the Poor of the respective Parishes, and also of such respective Lords or Stewards: Provided always, That if any Person or Persons interested in the Determination of the said Commissioner or Commissioners respecting the said Boundaries shall be dissatisfied with such Determination, such Person or Persons may appeal to the Justices of the Peace acting in and for the County in which such Lands or Grounds shall be situate at any General Quarter Session of the Peace to be holden within four Calendar Months next after the aforesaid Publication of the said Boundaries, by delivering or leaving such Description as aforesaid, the

Commissioners shall cause a Description of Boundaries to be delivered to one Church-Warden, &c. of the respective Parishes, and the Lords of Manors, &c.

Persons dissatisfied may appeal to the Quarter Sessions.

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Party or Parties making such Appeal, giving eight Days Notice of such Appeal, and of the Matter thereof in Writing to the Commissioners; and the Decision of the said Justices therein shall be final and conclusive, and shall not be removed or removeable by *Certiorari*, or any other Writ or Process whatsoever, into any of his Majesty's Courts of Record at *Westminster*, or elsewhere.

Decisions at the Sessions shall be final.

IV. And be it further enacted, That a true, exact, and particular Survey, Admeasurement, Plan, and Valuation, of all the Lands and Grounds to be divided, allotted, and inclosed by any such Act, and also of all the Messuages, Cottages, Orchards, Gardens, Homesteads, ancient enclosed Lands and Grounds, within any such Parish or Manor, shall be made and reduced into Writing, by such Commissioner or Commissioners, or by such other Person or Persons as he or they shall nominate and appoint, as soon as conveniently may be, for the Purposes of such Act; and the Number of Acres and decimal Parts of an Acre, in Statute Measure, contained in all the Lands and Grounds directed or authorized to be divided, allotted, and inclosed, and also in all the ancient inclosed Lands, Grounds, and Homesteads aforesaid, and of each and every Proprietor's distinct Property in the same respectively, at the Time of making such Survey and Admeasurement, shall be therein set forth and specified; and that the said Survey, Admeasurement, Plan, and Valuation, shall be kept by such Commissioner or Commissioners; and the Person or Persons who shall make such Survey, Admeasurement, Plan, and Valuation, shall verify the same upon Oath or Affirmation, at any Meeting to be held after the making thereof (which Oath or Affirmation the Commissioners, or any one of them, are and is hereby empowered and required to administer); and the Proprietors and their respective Agents, and all Persons interested therein, shall at all seasonable Times have Liberty to peruse and inspect such Admeasurement and Plan only, and to take Copies thereof and Extracts therefrom respectively.

A Survey, Admeasurement, Plan, & Valuation of the Lands &c. to be inclosed shall be made and kept by the Commissioners, which shall be verified by the Persons making them.

Proprietors may inspect Admeasurements and Plans, and take Copies.

V. And be it further enacted, That for surveying, admeasuring, and valuing all the said Lands and Grounds, and for other the Purposes of such Act, it shall be lawful for such Commissioner or Commissioners, every or any of them, or the Person or Persons to be appointed by him or them to make such Survey, Admeasurement, Plan, and Valuation, together with their and every of their Assistants and Servants, at any Time or Times whatsoever, until such Division shall be completed, to enter, view, and examine, survey and admeasure, all and every Part of the Lands and Grounds intended to be divided and allotted, and also all the ancient inclosed Lands, Grounds, and Homesteads, directed to be surveyed, and to do or cause to be done any Act or Thing necessary for putting such Act into Execution: Provided always, That any Map or Survey made at the Time of passing any such Act, which shall be tendered to such Commissioner or Commissioners, and which shall be in his or their Judgement, and to his or their Satisfaction a just and true Map or Survey, proper for the Purpose of carrying such Act into Execution, may be used for that Purpose, if the said Commissioner or Commissioners shall think fit, without any new Map or Survey being made of such Part of the Lands and Grounds, as shall be comprized in any such approved Map or Survey as aforesaid:

Until the Division shall be completed the Lands may be entered by the Commissioners, or any Persons they may appoint, to make Surveys, &c.

Maps made at the Time of passing Acts may be used, without making new ones, if Commissioners shall fit.

VI. And be it further enacted, That all Persons, and Bodies Corporate or Politick, who shall have or claim any Common or other Right to or in any such Lands so to be inclosed, shall deliver or cause to be delivered to such Commissioner or Commissioners, or one of them, at some one of such Meetings as the said Commissioner or Commissioners shall appoint for the Purpose (or within such further Time, if any, as the said Commissioner or Commissioners shall for

Claimants of Common, &c. in Land to be inclosed, shall deliver to the Commissioners Schedules of Particulars, or shall be excluded, which Claims may be inspected, and Copies taken.

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some special Reason think proper to allow for that Purpose) an Account or Schedule in Writing, signed by them, or their respective Husbands, Guardians, Trustees, Committees, or Agents, of such their respective Rights or Claims, and therein describe the Lands and Grounds, and the respective Messuages, Lands, Tenements, and Hereditaments, in respect whereof they shall respectively claim to be entitled to any and which of such Rights in and upon the same or any Part thereof, with the Name or Names of the Person or Persons then in the actual Possession thereof, and the particular computed Quantities of the same respectively, and of what Nature and Extent such Right is, and also in what Rights, and for what Estates and Interests they claim the same respectively, distinguishing the Freehold from the Copyhold or Leasehold; or on Non-compliance therewith, every of them making Default therein shall, as far only as respects any Claim so neglected to be delivered, be totally barred and excluded of and from all Right and Title in or upon such Lands so to be divided respectively, and of and from all Benefit and Advantage in or to any Share or Allotment thereof; all which said Claims or Accounts shall, at all seasonable Times until after the Execution of the said Award, be open to the Inspection and Perusal of all Parties interested or claiming to be interested in the Premises, their respective Agents or Attornies, who may take Copies thereof, or Extracts therefrom respectively; and if any Person or Persons, or Body Politick or Corporate interested, or claiming to be interested in the Premises, shall have any Objection to offer to any such Account or Claim, the Particulars of such Objection shall be reduced into Writing, and signed by them or their respective Husbands, Guardians, Trustees, Committees, or Agents, and shall be delivered to the said Commissioner or Commissioners, at or before some other Meeting of such Commissioner or Commissioners, to be by him or them appointed for that Purpose; and no such Objection shall afterwards be received, unless for some legal Disability or special Cause to be allowed by the said Commissioner or Commissioners. (1)

Objections to Claims shall be delivered at or before the Meeting appointed for that Purpose, or shall not be received except for special Cause.

VII. Provided also, and be it further enacted, That Nothing herein contained shall authorise such Commissioner or Commissioners to hear and determine any Difference or Dispute which may arise, touching the Right or Title to any Lands, Tenements, or Hereditaments, but such Commissioner or Commissioners shall assign and set out the several Allotments directed to be made unto the Person or Persons, who, at the Time of the Division and Inclosure, shall have the actual Seisin or Possession of the Lands, Tenements, or Heriditaments, in Lieu or in Right whereof such Allotment shall be respectively made: Provided also, That no Difference or Suit, touching the Title to any Lands, Tenements, or Hereditaments, shall impede or delay the Commissioner or Commissioners in the Execution of the

Commissioners not to be authorized to determine Disputes touching Title to Lands; but shall assign the Allotments to the Persons in actual Seisin or Possession. Disputes as to Title shall not delay Inclosure.

(1) The Drawing a Claim conformable to this Clause requires a very considerable Portion of technical Accuracy, and I have in Practice known many valuable Rights defeated in consequence of the Informality of the Claim. The Discretion reposed in Commissioners upon this Subject is extremely liable to Abuse, as such Commissioners have, if not generally, at least very frequently, the Feeling of Agents for the Parties by whom they are nominated, and I have actually heard a Commissioner avow, that he considered himself as the Agent of a particular Description of Claimants, and it is obvious, that a Person with such Feelings may be induced to admit or reject the Presentation of further Claims, according to the Interests which he is disposed to espouse. The most suitable Remedy for this Inconvenience would be a general Enactment, that all Objections to Claims should be particularly stated in Writing, and that the Claimant should be at Liberty to amend his Claim in the Particulars objected to.

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Powers vested in him or them, by Virtue of any such Act; but the Division or Inclosure directed to be made shall be proceeded in, notwithstanding such Difference or Suit.

Commissioners before making any Allotments shall appoint publick Carriage Roads,

VIII. And be it further enacted, That such Commissioner or Commissioners shall, and he or they is and are hereby authorized and required, in the first Place, before he or they proceed to make any of the Divisions and Allotments directed in and by any such Act, to set out and appoint the publick Carriage Roads and Highways, through and over the Lands and Grounds intended to be divided, allotted, and inclosed, and to divert, turn, and stop up, any of the Roads and Tracts, upon and over, all, or any Part of the said Lands and Grounds, as he or they shall judge necessary, so as such Roads and Highways shall be, and remain thirty Feet wide at the least, and so as the same shall be set out in such Directions as shall, upon the Whole, appear to him or them most commodious to the Publick, and he or they are hereby further required to ascertain the same by Marks and Bounds, and to prepare a Map in which such intended Road, shall be accurately laid down and described, and to cause the sames being signed by such Commissioner, if only one, or the major Part of such Commissioners, to be deposited with the Clerk of the said Commissioner or Commissioners, for the Inspection of all Persons concerned; and as soon as may be after such Carriage Roads shall have been so set out, and such Map so deposited, to give Notice in some Newspaper to be named in such Bill, and also by affixing the same upon the Church Door of the Parish, in which any of the Lands so to be inclosed shall lie, of his or their having set out such Roads, and deposited such Map, and also of the general Lines of such intended Carriage Roads, and to appoint in and by the same Notice, a Meeting to be held by the said Commissioner or Commissioners, at some convenient Place, in or near to the Parish or Township within which the said Inclosure is to be made, and not sooner than three Weeks from the Date and Publication of such Notice, at which Meeting it shall and may be lawful for any Person who may be injured or aggrieved by the setting out of such Roads to attend, and if any such Person shall object to the setting out of the same, then such Commissioner or Commissioners, together with any Justice or Justices of Peace, acting in and for the Division of the County in which such Inclosure shall be made, and not being interested in the same, who may attend such Meeting, shall hear and determine such Objection, and the Objections of any other such Person, to any Alteration that the said Commissioner or Commissioners, together with such Justice or Justices, may in Consequence propose to make, and shall, and he or they are hereby required, according to the best of their Judgement upon the Whole, to order and finally direct how such Carriage Roads shall be set out, and either to confirm the said Map, or make such Alterations therein as the Case may require: Provided always, That in Case such Commissioner or Commissioners shall by such Bill be empowered to stop up any old or accustomed Road, passing or leading through any Part of the old Inclosures in such Parish, Township, or Place, the same shall in no Case be done without the Concurrence and Order of two Justices of the Peace, acting in and for such Division, and not interested in the Repair of such Roads, and which Order shall be subject to an Appeal to the Quarter Sessions, in like Manner and under the same Forms and Restrictions as if the same had been originally made by such Justice as aforesaid.

and prepare a Map thereof to be deposited with their Clerk, and give Notice thereof, & appoint a Meeting at which, if any Person shall object, the Commissioners, with a Justice of the Division, shall determine the Matter.

Where Commissioners may be empowered to stop up any old Road, it shall not be done without the Order of two Justices, subject to appeal to Quarter Sessions.

Carriage Roads shall be fenced on both Sides according to Directions of Commissioners.

IX. And be it further enacted, That such Carriage Roads so to be set out as aforesaid, shall be well and sufficiently fenced on both Sides, by such of the Owners and Proprietors of the Lands and Grounds intended to be divided, allotted, and inclosed, and within

No. 7. 41 G. III. c. 109.

such Time as such Commissioner or Commissioners shall, by any Writing under his or their Hands, direct or appoint, and that it shall not be lawful for any Person or Persons to set up or erect any Gate across any such Carriage Road, or to plant any Trees in or near to the Hedges on the Sides thereof, at a less Distance from each other than fifty Yards; and such Commissioner or Commissioners shall, and he or they is and are hereby empowered and required, by Writing under his or their Hands, to nominate and appoint one or more Surveyor or Surveyors, with or without a Salary, for the First forming and completing such Parts of the said Carriage Roads as shall be newly made, and for putting into complete Repair such Part of the same as shall have been previously made; which Salary (if any) and also the Expence of forming, completing, and repairing such Roads respectively, over and above a Proportion of the Statute Duty on the Roads so to be repaired, shall be raised in like Manner as the Charges and Expences of obtaining and passing any such Act, and of carrying the same into Execution, shall be thereby directed to be raised, and shall be paid to such Surveyor or Surveyors on or before the Execution of the Award of such Commissioner or Commissioners; and in Case the same shall be thereby provided to be raised by Sale of any Part of the Lands so to be divided and inclosed, that then such Commissioner or Commissioners shall make a conditional Rate upon the Owners and Proprietors of the same, in Case the Produce of such Sale should prove insufficient for the Purposes aforesaid; and such Surveyor or Surveyors shall, and he or they is and are hereby directed to be in all Respects subject to the Jurisdiction and Controul of the Justices of the Peace acting in and for the County in which such Roads shall respectively lie, and shall account to such Justices in like Manner for all Monies so to be by him or them received and expended, and for the Re-payment of any Surplus which may remain in his or their Hands to such Persons as shall have been made liable to contribute thereto, according to the Proportion so as above ascertained by such Commissioner or Commissioners; and such Justices shall have the like Powers of levying any such Rate as may by them be thought necessary for the Purposes aforesaid, according to the Proportions previously ascertained by such Commissioner or Commissioners, as if such Surveyor or Surveyors had been appointed under or by Virtue of the General Highway Act passed in the thirteenth Year of the Reign of his present Majesty; and in Case such Surveyor or Surveyors shall neglect to complete and repair such Roads respectively within the Space of two Years after such Award, unless a further Time, not exceeding one Year, shall for that Purpose be allowed by such Justices, and then within such further Time, he or they shall forfeit the Sum of Twenty Pounds, and the Inhabitants at large of the Parish, Township, or Place wherein such Roads shall be respectively situate, shall be in no wise charged or chargeable towards forming or repairing the said Roads respectively, except such Proportion of such Statute Duty as aforesaid, till such Time as the same shall, by such Justices in their special Sessions, be declared to be fully and sufficiently formed, completed, and repaired, from which Time, and for ever thereafter, the same shall be supported and kept in Repair by such Persons, and in like Manner as the other publick Roads within such Parish, Township, or Place, are by Law to be amended and kept in Repair.

No Person shall erect any Gate across any Road, or plant any Trees on the Sides, at less than 50 Yards distance.

Commissioners shall appoint Surveyors, whose Salary and the Expence of making the Road, (above the Statute Duty,) shall be raised as other Expences, and paid before Execution of the Award.

Surveyors subject to the Controul of the Justices, and shall account to them for Monies received.

Justices may levy Rates.

Surveyors neglecting to complete Roads within a limited Time shall forfeit 20*l* and the Inhabitants shall not be chargeable (except to the Statute Duty) till the Roads are declared to be completed at a Special Session.

X. And be it further enacted, That such Commissioner or Commissioners shall, and he or they is and are hereby empowered and required to set out and appoint such private Roads, Bridleways, Footways, Ditches, Drains, Watercourses, Watering Places, Quarries, Bridges, Gates, Stiles, Mounds, Fences, Banks, Bounds, and Land

Commissioners shall appoint private Roads, &c.

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Marks, in, over, upon, and through or by the Sides of the Allotments to be made and set out in pursuance of such Act, as he or they shall think requisite, giving such Notice and subject to such Examination, as to any private Roads or Paths, as are above required in the Case of publick Roads, and the same shall be made, and at all Times for ever thereafter be supported and kept in Repair, by and at the Expence of the Owners and Proprietors for the Time being of the Lands and Grounds directed to be divided and inclosed, in such Shares and Proportions as the Commissioner or Commissioners shall in and by his or their Award order and direct.

Grass and Herbage on Roads shall belong to the Proprietors of the Lands adjoining; and all Roads which shall not be set out shall be allotted and inclosed

XI. And be it further enacted, That after such publick and private Roads and Ways shall have been set out and made, the Grass and Herbage arising thereon shall for ever belong to and be the sole Right of the Proprietors of the Lands and Grounds which shall next adjoin the said Roads and Ways on either side thereof, as far as the Crown of the Road; and all Roads, Ways, and Paths, over, through, and upon such Lands and Grounds which shall not be set out as aforesaid, shall be for ever stopped up and extinguished, and shall be deemed and taken as Part of the Lands and Grounds to be divided, allotted, and inclosed, and shall be divided, allotted, and inclosed accordingly: Provided, That Nothing herein contained shall extend, or be construed to extend, to give such Commissioner or Commissioners any Power or Authority to divert, change, or alter any Turnpike Road that shall or may lead over any such Lands and Grounds, unless the Consent of the Majority of the Trustees of such Turnpike Road, assembled at some publick Meeting called for that Purpose on ten Days Notice, be first had and obtained. (2)

No Turnpike Road shall be altered without the Consent of the Trustees.

Commissioners, in making Allotments, shall have due regard to the Situation of Houses as well as to the Quantity and Quality of Land.

XII. And be it further enacted, That such Commissioner or Commissioners in making the several Allotments directed by any such Act, shall have due Regard as well to the Situation of the respective Houses or Homesteads of the Proprietors, as to the Quantity and Quality of the Lands and Ground to be allotted to them respectively, so far as may be consistent with the general Convenience of the said Proprietors; and that such Commissioner or Commissioners in making the said Allotments shall have particular Regard to the Convenience of the Owners or Proprietors of the smallest Estates in the Lands and Grounds directed to be allotted and exchanged.

Commissioners may direct small Allotments to be laid together and ring-fenced, and stocked and depastured in Common by the Proprietors.

XIII. 'And whereas the Proprietors and Persons interested in 'Open Common Fields, Meadows, Pastures, Commons, and Waste 'Lands, directed to be divided and allotted, whose Allotments thereof 'will be small, and expensive to inclose, may be desirous of stocking 'and depasturing their Allotments in common, and of sharing such 'Produce as may grow thereon, under proper Regulations;' be it therefore further enacted, That such Commissioner or Commissioners shall be, and he or they is and are hereby fully authorized and empowered, on Application of the Parties interested at their first or second Meeting for receiving Claims, and on an attentive View and full Consideration of the Premises, to award, order, and direct any such Allotments to be laid together and ring-fenced, and to be stocked and depastured in common, and to make such Orders and Regulations for the equitable Enjoyment thereof, and for the Participation of any Produce growing or to grow thereon, as such Commissioner or Commissioners may think beneficial and proper for the said several Parties interested therein.

XIV. And be it further enacted, That the several Shares of and in any Lands or Grounds which shall upon any such Division be assigned, set out, allotted, and applied, unto and for the several Persons

(2) See Rex v. Commissioners of Dean Inclosure, 2 M. & S. 80.

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who shall be entitled to the same, shall, when so allotted, be and be taken to be in full Bar of and Satisfaction and Compensation for their several and respective Lands, Grounds, Rights of Common, and all other Rights and Properties whatsoever, which they respectively had or were entitled to, in and over the said Lands and Grounds, immediately before the passing of any such Act; and that from and immediately after the making the said Division and Allotments, and the Execution of the Award of such Commissioner or Commissioners, or at any other Time as such Commissioner or Commissioners shall, by Writing under his or their Hands, to be affixed on the principal Door of the Church of the Parish in which the Lands and Grounds shall be situate, direct or appoint, all Rights of Common, and all Rights whatsoever, by such Act intended to be extinguished, belonging to or claimed by any Person or Persons whomsoever, Bodies Politick or Corporate, in, over, or upon such Lands or Grounds, shall cease, determine, and be for ever extinguished.

Allotments shall be in full Compensation for all Rights in the Lands, which shall cease on Notice from the Commissioners affixed on the Church Door.

XV. And be it further enacted, That such Commissioner or Commissioners shall, and he or they is and are hereby authorized, to set out, allot, and award any Messuages, Buildings, Lands, Tenements, Hereditaments, new Allotments, or old Inclosures, within such Parish or Manors, in lieu of or in Exchange for any other Messuages, Buildings, Lands, Tenements, Hereditaments, new Allotments, or old Inclosures within the said Parish or Manors, or within any adjoining Parish or Place; so as that all such Exchanges be made with the Consent of the respective Owners, Proprietors, or other Persons, seised of the Lands, Hereditaments, and Premises which shall respectively be so exchanged as aforesaid, or of the Husbands, Guardians, Trustees, Committees, or Attornies acting for or on Behalf of such Owners, Proprietors, or other Persons respectively, who are under Coverture, Minors, Lunaticks, or beyond the Seas, or under any other Disability or Incapacity of acting for themselves (such Consent to be testified by Writing under their respective Hands); and so that all such Exchanges be ascertained, specified, and set forth in the Award of such Commissioner or Commissioners; and so that all such Exchanges of any Lands, Tenements, or Hereditaments, belonging to or held in Right of any Church, Chapel, or Ecclesiastical Benefice, shall also be made with the like Consent, in Writing, of the Bishop of the Diocese, and of the Patron of any Church, Chapel, or Ecclesiastical Benefice for the Time being; and all such Exchanges so made as aforesaid shall be for ever good, valid, and effectual in the Law, to all Intents and Purposes whatsoever.

Commissioners may exchange Allotments, Messuages, Lands, &c. with the Consent of the Proprietors, or if belonging to Churches, &c. with the Consent of the Bishop and of the Patron.

XVI. 'And whereas it may happen that some of the Proprietors of Messuages, Cottages, Tenements, or Lands, in any such Parish or Manor, and Persons entitled to Allotment or Allotments to be made by virtue of any such Act, may be seised thereof or entitled thereto in Joint Tenancy, or as Coparceners, or Tenants in common, and cannot, by reason of Infancy, Settlement, or Absence beyond Seas, make an effectual Division thereof;' be it therefore further enacted, That it shall be lawful for any such Commissioner or Commissioners, and he or they is and are hereby authorized and empowered (upon the Request in Writing of such Joint Tenants or Coparceners, or Tenants in common, or any or either of them, or of the Husbands, Guardians, Trustees, Committees, or Attornies of such as are under Coverture, Minors, Lunaticks, or under any other Incapacity as aforesaid, or absent beyond Seas) to make Partition and Division of the Messuages, Cottages, Tenements, Lands, and Allotment or Allotments, to such of the said Owners or Proprietors who shall be entitled to the same as Joint Tenants, Coparceners, or Tenants in common, and to allot the same accordingly to such Owners and Proprietors in

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Severalty; and from and immediately after the said Allotments shall be so made and declared, the same shall be holden and enjoyed by the Person or Persons to whom the same shall be allotted in Severalty, in such and the same Manner, and subject to such and the same Uses, as the undivided Parts or Shares of such Estates would have been held in case such Partition and Division had not been made.

Persons shall accept their Allotments in a limited Time, or forfeit their Right.

XVII. And be it further enacted, That all and every Person or Persons, to whom any Allotment or Allotments shall be made by virtue of any such Act, shall, and he, she, or they is and are hereby required to accept his, her, and their respective Allotments within the Space of two Calendar Months next after the Execution of the Award, directed to be made in and by any such Act; and in case any Person or Persons shall neglect or refuse to accept of his, her, or their Share or Allotment within the Time before mentioned, such Person or Persons so neglecting or refusing shall be totally excluded from having or receiving any Estate or Interest, or Right of Common whatsoever, in any Part of the Lands and Grounds to be divided and inclosed by virtue of any such Act.

Guardians, &c may accept for incapacitated Persons, and Tenants for Life shall accept of Allotments.

Non-acceptance of Guardians, &c. shall not prejudice the Rights of incapacitated Persons who shall accept in a limited Time after enabled so to do.

XVIII. Provided always, and be it further enacted, That it shall and may be lawful for the respective Guardians, Husbands, Trustees, Committees, or Attornies of any Person or Persons being Minors, Femes Covert, Lunaticks, beyond the Seas, or otherwise incapable by Law, to accept any such Allotments as shall be made by virtue of any such Act, to and for the Use of such Person or Persons so incapacitated as aforesaid; and also that any Person or Persons entitled to any Allotment or Allotments as Tenant or Tenants for Life or Lives, shall be, and he, she, and they is and are hereby respectively enabled and required to accept of and take such Allotment or Allotments respectively; and every such Acceptance respectively shall be and is hereby declared to be valid and effectual, to all Intents and Purposes whatsoever: Provided further, That the Non-claim or Non-acceptance of any such Guardian, Husband, Trustee, Committee, or Attorney, shall not exclude or in any Way prejudice the Right of any Infant, Feme Covert, Lunatick, or other Person or Persons being under any Disability or Incapacity as aforesaid, or absent beyond the Seas, who shall claim or accept such Share or Allotment within twelve Calendar Months next after such Disability or Incapacity shall be removed, or of any Person entitled as Heir in Remainder after the Death of any Person dying during such Incapacity or Disability, who shall claim or accept the same within one Year next after his, her, or their Right, Title, or Interest shall have accrued, descended, or vested, or be known so to be.

Before Execution of the Award, Allotments may be ditched and inclosed, with the Consent of the Commissioners.

XIX. And be it further enacted, That after the Allotments shall be set out by such Commissioner or Commissioners, and at any Time before the Execution of his or their Award, it shall be lawful for any Person or Persons to whom any Allotment or Allotments shall be so made, and staked or marked out, by and with the Consent of such Commissioner or Commissioners in Writing under his or their Hands, to ditch, fence off, and inclose their respective Allotments, in such Manner as such Commissioner or Commissioners shall so direct and appoint.

Trees, &c shall be allotted with the Lands whereon they stand, the Parties paying to the Owners such Sums as the Commissioners shall direct;

XX. And be it further enacted, That the Timber Trees and other Trees, Thorns, and Bushes, standing and growing upon any Waste Lands or other Lands to be allotted by such Act, shall be allotted and go along with the Lands whereon they respectively stand, and shall be deemed the Property of the several Persons to whom the same Lands shall be respectively allotted, such Persons paying to the Owner or respective Owners of the said Trees, such Sums of Money for the same, and at such Time or Times, and Place or Places, as the said

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Commissioner or Commissioners shall by Writing under his or their Hand or Hands direct; but if the said Parties who are to make such respective Payments shall neglect or refuse to make the same accordingly, then it shall be lawful to and for the respective Parties who shall be entitled to have and receive such Payments, to enter on the said Lands, and cut down, take, and carry away to their own Use, the said Trees, Thorns, or Bushes, in respect of which the said Payments were respectively to be made to them, at any seasonable Time or Times within one Year next after such Neglect or Default, they doing as little Damage on the said Lands as may be.

But in Case of Neglect, the Owners may cut them down and take them away.

XXI. And be it further enacted, That whenever any Sum of Money is, under the Provision of this Act, or any such Bill, to be paid for the Purchase or Exchange of any Lands, Tenements, or Hereditaments, or of any Timber or Wood growing thereon, and which Sum of Money ought to be laid out in the Purchase of other Lands, Tenements, or Hereditaments, to be settled to the same Uses, it shall and may be lawful, to and for such Commissioner or Commissioners, out of such Sum to defray such Proportion of the Expence of passing such Act, and of carrying the same into Execution, as shall, if any, be charged upon any of the Lands, Tenements, or Hereditaments, of the Person or Persons, Body Politick or Corporate, Trustees or Feoffees, in Possession of the Lands, Tenements, or Hereditaments, so sold or exchanged, or on which such Timber or Wood actually grew, and also the Expence of any permanent Improvement, such as building, sub-dividing, draining, or planting, and the like, which shall in the Judgment of such Commissioner or Commissioners be proper to be made, and shall be made under his or their Direction, upon any Lands to be by virtue of such Act allotted to such Person or Persons, Body Politick or Corporate, Trustees or Feoffees respectively; and in case the Surplus of such Money shall amount to the Sum of two hundred Pounds, then the same shall, with all convenient Speed, be invested in the Purchase of any Lands or Hereditaments, which shall be conveyed and settled upon, and subject to the like Uses, Trusts, and Limitations, as such Land so sold or exchanged, or the Lands on which such Timber grew, were settled, limited, or assured; and in the mean Time, and until such Purchase can be made, such Money shall be paid into the Bank of *England*, in the Name and with the Privity of the Accountant General of the High Court of Chancery, to be placed to his Account there *ex parte* the said Commissioner or Commissioners, without Fee or Reward, to the Intent that such Money shall be applied, under the Direction and with the Approbation of the said Court, to be signified by an Order made upon a Petition to be preferred in a summary Way, by the Person or Persons who would have been entitled to such Lands, Tenements, and Hereditaments, or Timber respectively, either in or towards the Redemption or Purchase of Land Tax, or towards the Discharge of any Debts or Incumbrances affecting the Lands or Hereditaments so purchased or exchanged, or on which such Timber grew, or until the same shall, upon the like Application, in a summary Way, be laid out by Order of the said Court in the Purchase of other Lands, or Hereditaments to be settled to the like Uses; and in the mean Time, and until Order can be made, such Money may, by Order of the said Court, be laid out in some of the Publick Funds, or on Government or real Securities, and the Dividends or Interest arising therefrom, shall, by Order of the said Court, be paid to such Person or Persons, as would, for the Time being, be entitled to the Rents and Profits of such Lands, Tenements, and Hereditaments, so to be purchased, conveyed, and settled.

Where Money is to be paid for Lands &c which ought to be laid out in other Purchases to be settled to the same Uses, the Commissioners may thereout defray a Proportion of the Expences of passing the Act, and putting it in Execution, &c.; and if the Surplus amount to 200l. it shall, as soon as may be, be laid out in other Purchases, and in the mean Time be paid into the Bank and applied under the Direction of the Court of Chancery.

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If such Money be less than 200l. and upwards of 20l. it shall, at the Option of the Person entitled to the Rents, be paid into the Bank or to two Trustees to be approved of by the Commissioners, for the same Purposes.

XXII. Provided always, and be it further enacted, That if any such Money shall be less than the Sum of two hundred Pounds, and shall exceed the Sum of twenty Pounds, then and in such Case the same shall, at the Option of the Person or Persons for the Time being entitled to the Rents and Profits of the Lands or Hereditaments so purchased, or of his, her, or their Guardian or Guardians, Committee or Committees, in case of Infancy or Lunacy, to be signified in Writing under their respective Hands, be paid into the Bank in the Name and with the Privity of the said Accountant General of the High Court of Chancery, and be placed to his Account as aforesaid, in order to be applied in the Manner before directed; or otherwise the same shall be paid at the like Option to two Trustees to be nominated by the Person or Persons making such Option, and approved of by the Commissioner or Commissioners (such Nomination and Approbation to be signified in Writing under the Hands of the nominating and approving Parties) in order that such Principal Money and the Dividends arising thereon may be applied in Manner herein-before directed, so far as the Case be applicable, without obtaining or being required to obtain the Direction or Approbation of the said Court of Chancery.

If less than 20l it shall be applied to the Use of the Person entitled to the Rents of the Lands, &c

XXIII. Provided also, and be it further enacted, That where such Money shall be less than twenty Pounds, then and in such Case the same shall be applied to the Use of the Person or Persons who would for the Time being have been entitled to the Rents and Profits of the Lands or Hereditaments so purchased, in such Manner as the said Commissioner or Commissioners shall think fit, or in case of Infancy or Lunacy, then to his, her, or their Guardian or Guardians, Committee or Committees, to and for the Use and Benefit of such Person or Persons so entitled respectively.

If any Person does not accept, inclose, and fence his Allotment as the Commissioners shall direct, they may cause it to be inclosed & fenced and let, and receive the Rents until the Expences are satisfied, or they may charge them upon the Proprietor.

XXIV. And be it further enacted, That if any Person to whom any Allotment or Allotments shall be made, or any Guardian, Husband, Trustees, Feoffees, Committees, or Attorney of any Infant, Feme Covert, Charity or Charities, Lunatick, Idiot, Person or Persons beyond the Seas, or otherwise incapable of acting respectively, or any Tenant in Tail, or for Life, or Trustee or Trustees for any Settlement, or any Mortgagee or Mortgagees, or other Creditor in Possession, shall neglect or refuse to accept, inclose, and fence his, her, or their Allotment or Allotments, within such Time or Times as such Commissioner or Commissioners, by any Writing as aforesaid, or by his or their Award, shall order or direct, it shall be lawful for such Commissioner or Commissioners to cause such Allotment or Allotments to be inclosed and fenced, and to let the same to any Person or Persons he or they may think proper, and to receive the Rents and Profits thereof, until the Expences attending the Inclosure and Fencing thereof are paid and satisfied, or to charge such Expences upon the Proprietor or Proprietors of the same Allotment or Allotments; and by any such Writing as aforesaid, or by his or their said Award, to appoint to whom, and at what Time or Times the same shall be paid, subject to the same Mode, and with the like Powers of Recovery thereof, as may be provided respecting the other Expences of passing any such Act, and carrying the same into Execution, or otherwise directed by any such Act.

During seven Years after fencing Allotments, Fences may be erected on the Outside of the Ditches, and the Materials carried away by the Proprietors.

XXV. And be it further enacted, That it shall be lawful for the several Proprietors of the Allotments to be made in pursuance of any such Act, their Agents or Workmen, at any seasonable Time or Times, within the Space of Seven Years next after the Fencing of any Allotment or Allotments, to set up and erect Posts and Rails, or other dead Fences, on the Outside of the Ditches bounding their respective Allotments, not exceeding three Feet from such Ditches, for the Preservation of their Quickset Hedges, and at any seasonable Time or

Times before the Expiration of the said Term, to take and carry away the Materials of such outside Fences when they shall think proper.

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XXVI. And be it further enacted, That no Fences or Hedges which at the Time of the passing of any such Act shall be standing or growing in or upon any of the Lands directed to be divided and inclosed, shall be cut down or destroyed by the Owners and Proprietors thereof, after the passing of such Act, until the Execution of the Award, without the Consent of such Commissioner or Commissioners first had and obtained in Writing for that Purpose; and if any such Fences or Hedges shall be assigned or approved by such Commissioner or Commissioners as and for a Boundary Fence, or as and for a Subdivision Fence to and for any of the Allotments to be made in pursuance of such Act, all such Fences and Hedges shall be left uncut for the Benefit of the Person or Persons to whom such Allotment or Allotments shall belong; and he, she, or they shall make such Compensation in Money to the former Owners and Proprietors thereof, as such Commissioner or Commissioners shall, by Writing under his or their Hand or Hands in that Behalf order and appoint, subject to the same Mode, and with the like Powers of Recovery thereof, as may in such Act be provided respecting the other Expences of passing any such Act, and carrying the same into Execution.

No standing Fences or Hedges shall be destroyed till the Execution of the Award, without Consent of Commissioners, and if assigned as a Boundary Fence, shall be left uncut, the Persons entitled to the Allotments making Compensation therefore.

XXVII. Provided always, and be it further enacted, That no Proprietors whose Allotments or Shares shall, upon any such Inclosure, lie and be situate next and adjoining to any Common Fields or inclosed Grounds, the Boundary of which shall be fenced by any Mound, Fence, Brook, or Rivulet, shall be compelled to make or erect any Hedges, Ditches, or Fences, next adjoining to any such Common Fields or inclosed Grounds, for inclosing such their Allotments or Shares; but that the whole Mound, Fence, Brook or Rivulet, or other sufficient Fences which divide any such Common Fields or inclosed Grounds from such Allotments, shall for ever be and remain a Boundary Fence for the Purpose of such Division, and shall from Time to Time be maintained, kept, cleansed, scoured, and repaired, by the respective Proprietors thereof, in the same Manner as before the passing of this Act, or in such other Manner as such Commissioner or Commissioners shall order and direct: Provided nevertheless, That in Case it shall happen that some of the Proprietors shall have a greater Proportion of Fences to make and maintain upon any of the Lands directed to be divided and inclosed, than in the Judgement of such Commissioner or Commissioners the Allotments of such Proprietors ought to be charged with, it shall be lawful for such Commissioner or Commissioners, where he or they shall judge it proper, to ascertain and appoint such Sum of Money to be paid to every such Proprietor towards making and maintaining such Fences, by such other of the Proprietors who may have a less Proportion of Fencing, according to the Value and Quantity of the Lands to be allotted to them, and to grant such other Relief in Respect thereof, out of the Money to be raised for defraying the Expences of carrying such Act into Execution, as he or they shall think reasonable, and in Case any such Money shall be so directed and raised, in Order that the said Boundary Fences may be brought as near as may be to a just and equal Proportion.

Where the Boundary of any Common Fields, &c. shall be fenced by any Mound, &c. the Proprietors of adjoining Allotments shall not be compelled to fence them; but such Boundaries shall be maintained by the Proprietors as before, or as the Commissioners may appoint.

XXVIII. And be it further enacted, That in Case any Person or Persons shall wilfully and unlawfully break down, destroy, carry away, or damage any Fence, Stile, Post, Rail, Gate, Bridge, or Tunnel, which may be put up or placed under the Authority and for the Purposes of any such Act, every Person so offending, and being thereof convicted before any Justice of the Peace for the County in which the Lands or Grounds to be inclosed shall be situate, on Con-

Persons destroying, &c. Fences, &c. put up under the Authority of any Act, shall forfeit 5l. and the Proprietor of the Lands, &c. may give Evidence

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fession or on Proof of the Offence, by Oath of one or more credible Witness or Witnesses, (which Oath the said Justice is hereby authorized to administer,) shall for every such Offence forfeit and pay any Sum not exceeding five Pounds; and every Person shall be allowed to give Evidence of such Offence notwithstanding he may be a Proprietor or Occupier of Lands within, or an Inhabitant of such Parish, and notwithstanding he may be the Owner of any such Fence, Stile, Post, Rail, Gate, Bridge, or Tunnel; to be recovered as herein-after provided.

Whose Expences of obtaining and carrying any Act into Execution, shall be to be paid by the Proprietors, the Commissioners may, on Neglect, cause the same to be levied by Distress, or may take Possession of the Allotments, and receive the Rents, till satisfied.

XXIX. 'And whereas it may often be provided by such Act, 'that the Expences of obtaining the same, and also the Expences of 'carrying the same into Execution, shall be paid in proportion by the 'Proprietors of Lands or Grounds to whom any Allotments shall be 'made;' be it further enacted, That in such Case, when and so often as any such Person or Persons, except the Person or Persons thereby exempted from Payment of any such Charges and Expences, shall refuse or neglect to pay his, her, or their Proportion of the Charges and Expences, or shall refuse or neglect to pay the Expences attending the inclosing and fencing of any such Allotments, as upon the Neglect or Refusal of the Proprietors shall be inclosed and fenced by such Commissioner or Commissioners as herein-after mentioned, at the respective Days and Times to be appointed for Payment of such Charges and Expences, it shall be lawful for such Commissioner or Commissioners, by any Warrant or Warrants under his or their Hands and Seals, directed to any Person or Persons whomsoever, to cause the said Costs, Charges, and Expences, and Sum or Sums of Money respectively, to be levied by Distress and Sale of the Goods and Chattels of the Person or Persons so making Default in Payment as aforesaid, his, her, or their Husbands, Guardians, Trustees, Committees, or Attornies, wheresoever the same shall be found, rendering the Overplus (if any) on Demand, to the Owner or Owners of such Goods and Chattels, the reasonable Charges of such Warrant, Distress, and Sale being first deducted, together with the Interest after the Rate of five Pounds *per Centum per Annum*, to be computed on such Share or Shares, Proportion or Proportions, from the Time the same shall be directed to be paid by such Commissioner or Commissioners as aforesaid; or otherwise it shall be lawful for such Commissioner or Commissioners, or any Person or Persons authorized by him or them, to enter upon and take Possession of the Premises so to be allotted to such Person or Persons refusing or neglecting to pay as aforesaid, and to receive and take the Rents and Profits thereof, until thereby, therewith, or otherwise, the Share or Shares, Proportion or Proportions, and the said Costs and Charges so ordered and directed by such Commissioner or Commissioners to be paid by such Person or Persons as aforesaid, and all Interest on such Share or Shares, Proportion or Proportions, to be computed from the Time the same shall by such Commissioner or Commissioners be directed to be paid as aforesaid, and also all Costs, Charges, and Expences, occasioned by or attending such Entry upon and Perception of the Rents and Profits of the said Premises, shall be fully paid and satisfied.

Guardians, Tenants for Life, &c. may charge Allotments with Expences, if not exceeding 5l. per Acre;

XXX. And be it further enacted, That in such Case as last aforesaid, it shall be lawful for the Husbands, Guardians, Trustees, Committees, or Attornies of any of the Owners or Proprietors of such Allotment or Exchanged Lands, being under Coverture, Minors, Lunaticks, beyond the Seas, or under any other Disability, and for any of the said Owners or Proprietors being Tenants in Tail, or for Life or Lives, or Years determinable on a Life or Lives, or on any other Contingency, or otherwise, interested as aforesaid (except the Rector or Vicar of such Parish) to charge such Allotments, or exchanged Lands

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and Premises, with such Sum or Sums of Money as such Commissioner or Commissioners shall by his or their Award, or by Writing under his or their Hands, either before or after the Execution of such Award, adjudge necessary to pay and defray the said respective Shares of the Charges and Expences incident to and attending the obtaining such Act, and carrying the same into Execution, and of charging the said Lands as aforesaid, so that the same shall not exceed five Pounds for every Acre of such Allotments or exchanged Lands; and to grant, mortgage, surrender, lease, or demise, or otherwise subject the Lands, Tenements, and Hereditaments so to be charged, unto such Person or Persons who shall advance and lend the same respectively, his, her, or their Executors, Administrators, and Assigns, for any Term or Number of Years; or in case any Person in Possession, who shall or may be liable to and charged with a Share of the Expences as aforesaid, or enabled by this or any such Act to charge such Lands and Grounds with the same, shall choose to advance, pay, and discharge such Sum or Sums of Money, then it shall be lawful for the said Commissioner or Commissioners, by any Deed or Writing under his or their Hands and Seals, to be attested by two or more credible Witnesses, in like Manner to grant, mortgage, surrender, lease, demise, or otherwise subject the said Lands, Tenements, and Hereditaments, to such Person or Persons respectively paying and discharging the same, his, her, or their Executors, Administrators, and Assigns, for any Term or Number of Years, to and for the Payment of such Sum and Sums of Money so advanced, paid, and discharged by him or them, with Interest for the same, to commence on the Termination of his, her, or their Right in the Premises; so that every such Grant, Mortgage, Surrender, Lease, or Demise, be made with a Proviso or Condition to cease and be void, or with an express Trust to be surrendered or reassigned, when such Sum or Sums of Money thereby to be secured shall be fully paid and satisfied; and also with a Covenant to pay and keep down the Interest, so that no Person or Persons afterwards becoming possessed or entitled to any such Lands, Tenements, or Hereditaments, shall be liable to pay any further or larger Arrear of Interest than for six Calendar Months preceding the Time when the Title to such Possession shall have commenced; and that every such Charge, Grant, Mortgage, Surrender, Lease, or Demise, shall be good, valid, and effectual in the Law for the Purposes thereby intended.

and if Persons in Possession shall advance the Money, the Commissioners may mortgage the Lands to them for Reimbursement.

XXXI. 'And whereas in such Cases as aforesaid, where Provision may be made in any such Act for charging the Expences of 'passing such Act, or of executing the Powers therein contained, or 'of fencing the respective Allotments, on the several Proprietors 'thereof, it may be more convenient for the Feoffees or Trustees of 'any Charity Lands or School Lands, to have Lands deducted from 'the respective Allotmentr to be made for such Charity Lands or 'School Lands, for paying the proportionable Share in Respect of 'such Allotments of such Expences respectively, than to raise Money 'on Mortgage for those Purposes;' be it therefore further enacted, That it shall be lawful for any such Commissioner or Commissioners, if he or they shall judge it Right or Expedient, to deduct from the respective Allotments to be made to such Feoffees or Trustees as aforesaid, so much Land as shall in the Judgment of such Commissioner or Commissioners be equal in Value to their respective Proportions of the said Expences, and to allot, assign, and award the same to such Person or Persons as such Commissioner or Commissioners shall think proper, and who will undertake to pay and defray, and shall pay and defray, all such Expences.

Commissioners may deduct from Allotments for Charity or School Lands, what shall be deemed equal to the proportionable Share of the Expences, and allot the same to Persons undertaking to pay.

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Where the Expences of obtaining and carrying any Act into Execution shall be to be paid by Sale of Part of the Lands, Commissioners shall set out and sell a Part, and the Purchasers shall immediately make a deposit, which shall be forfeited, if Purchase Money be not duly paid.

XXXII. And be it further enacted, That in Case it shall be provided by any such Act, that the Expences attending the same shall be paid by Sale of any Part of the Land so to be inclosed, the said Commissioner or Commissioners shall mark and set out such Part or Parts of the said Waste or Commonable Lands, as in his or their Opinion will by Sale thereof raise a Sum of Money sufficient to pay and discharge all such Charges and Expences as may by any such Act be directed to be paid and discharged out of the same; and the said Commissioner or Commissioners shall sell such Part or Parts of the said Lands to any Person or Persons for the best Price or Prices that can be gotten for the same, by private Contract, or by publick Auction or Auctions to be holden for that Purpose, of which Six Weeks' previous Notice shall be given, in such Manner as shall by any such Act be directed with Respect to the other Notices thereby required; and the Person or Persons so purchasing the same, shall immediately pay (by Way of Deposit) into the Hands of the said Commissioner or Commissioners, or such Person or Persons as he or they shall direct and appoint, one tenth Part of his, her, or their Purchase Money, and pay the Remainder thereof within three Calendar Months next after, or at such other Time as the said Commissioner or Commissioners shall appoint, and in Default thereof, the Money so deposited shall be forfeited, and shall be applied in carrying such Act into Execution; and the said Allotment or Allotments for which the Whole of such Purchase Money shall not have been so paid, or for which there shall be no Bidding at such Auction, shall be again put up to Sale, and sold in Manner aforesaid, for the best Price or Prices that can be gotten for the same, or be sold by the said Commissioner or Commissioners by private Contract, for any Sum or Sums not less than the remaining nine tenths of the Price or respective Prices for which the same was or were respectively before sold, or the Amount of one Bidding above the Sum or respective Sums at which the same was or were respectively put up in the said former Action; and every Allotment for which the full Purchase Money shall be paid, shall immediately thereupon be absolutely discharged of and from all Common and other Right thereon or therein, and be vested in Fee Simple in, and be inclosed, and thenceforth held in Severalty by such Purchaser or Purchasers thereof respectively, as his, her, or their private and absolute Property, and shall be allotted accordingly by the said Commissioner or Commissioners; and the said Purchase Money shall be applied in defraying such Charges and Expences as may be in any such Act directed to be paid and discharged by the Sale of such Land

Commissioners may summon Witnesses; Penalty for Non attendance, &c. from 20s. to 5l.

XXXIII. And, for the better enabling such Commissioner or Commissioners to determine the several Matters and Things by this or any such Act referred to his or their Determination, be it enacted, That it shall be lawful to and for the said Commissioner or Commissioners from Time to Time, as he or they shall see Occasion, by any Writing or Writings under his or their Hand or Hands, to summon and require any Person or Persons to appear before them at any Time and Place in such Writing to be appointed, to testify the Truth touching the Matter in Dispute between any Proprietors or interested Persons, or otherwise relating to the Execution of the Powers given by this or any such Act, and to cause a Copy of such Writing to be served on such Person or Persons required to give Evidence, or to be left at his, or their usual or last Place of Abode; and every Person or Persons so summoned, who shall not appear before the said Commissioner or Commissioners pursuant to such Summons (without assigning some reasonable Excuse for not appearing) or appearing shall refuse to be sworn or examined on Oath or Affirmation, which Oath

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or Affirmation the said Commissioner or Commissioners is and are hereby empowered and required to administer, (such Person or Persons having been paid or tendered to him, her, or them, the reasonable Charges of his, her, or their Attendance) and being thereof convicted before one of his Majesty's Justices of the Peace of the County or District in which such Lands are situated, upon Information thereof upon Oath made before any such Justice, shall, for every such Neglect or Refusal, forfeit and pay such Sum of Money, not exceeding ten Pounds, nor less than five Pounds, as such Justice or Justices shall think fit and order.

Witness shall not be obliged to travel above eight Miles.

XXXIV. Provided always, and be it further enacted, That no Witness summoned to attend such Commissioner or Commissioners, shall be obliged to travel above eight Miles from the Boundary of the Parish, Manor, or District, by any such Act intended to be inclosed.

After Allotment Commissioners shall draw up their Award, which shall be read and executed at a Meeting of the Proprietors & proclaimed the next Sunday in the Church, and then considered as complete.

XXXV. And be it further enacted, That as soon as conveniently may be after the Division and Allotment of the said Lands and Grounds shall be finished, pursuant to the Purport and Directions of this or any such Act, the said Commissioner or Commissioners shall form and draw up, or cause to be formed and drawn up, an Award in Writing, which shall express the Quantity of Acres, Roods, and Perches, in Statute Measure, contained in the said Lands and Grounds, and the Quantity of each and every Part and Parcel thereof which shall be so allotted, assigned, or exchanged, and the Situations and Descriptions of the same respectively, and shall also contain a Description of the Roads, Ways, Footpaths, Watercourses, Watering Places, Quarries, Bridges, Fences, and Land Marks, set out and appointed by the said Commissioner or Commissioners respectively as aforesaid, and all such other Rules, Orders, Agreements, Regulations, Directions, and Determinations, as the said Commissioner or Commissioners shall think necessary, proper, or beneficial to the Parties; which said Award shall be fairly ingrossed or written on Parchment, and shall be read and executed by the Commissioner or Commissioners, in the Presence of the Proprietors who may attend at a special General Meeting called for that Purpose, of which ten Days' Notice at least shall be given in some Paper to be named in such Act and circulating in the County, which Execution of such Award shall be proclaimed the next *Sunday* in the Church of the Parish in which such Lands shall be, from the Time of which Proclamation only and not before, such Award shall be considered as complete; and shall, within twelve Calendar Months after the same shall be so signed and sealed, or so soon as conveniently may be, be inrolled in one of his Majesty's Courts of Record at *Westminster*, or with the Clerk of the Peace for the County in which such Lands shall be situated, to the End that Recourse may be had thereto by any Person or Persons interested therein, for the Inspection and Perusal whereof no more than One Shilling shall be paid; and a Copy of the said Award, or any Part thereof, signed by the proper Officer of the Court wherein the same shall be inrolled, or by the Clerk of the Peace for such County, or his Deputy, purporting the same to be a true Copy, shall from Time to Time be made and delivered by such Officer or Clerk of the Peace for the Time being as aforesaid, to any Person requesting the same, for which no more shall be paid than Two-pence for every Sheet of seventy-two Words; and the said Award, and each Copy of the same, or of any Part thereof, signed as aforesaid, shall at all Times be admitted and allowed in all Courts whatever as legal Evidence; and the said Award or Instrument, and the several Allotments, Partitions, Regulations, Agreements, Exchanges, Orders, Directions, Determinations, and all other Matters and Things therein mentioned and contained, shall, to all Intents and Purposes, be binding and

Awards to be inrolled in one of the Courts at Westminster, or with the Clerk of the Peace, and may be inspected, and Copies obtained.

Award and Copies shall be legal Evidence, and Award be binding on all Parties interested.

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conclusive, except where some Provision to the contrary is herein or shall be by any such Act contained, unto and upon the said Proprietors, and all Parties and Persons concerned or interested in the same, or in any of the Lands, Grounds, or Premises aforesaid; and also that the said respective Commissioners, if they think it necessary, shall form or draw, or cause to be formed and drawn, on Parchment or Vellum, such Maps or Plans of the said Lands and Grounds, the better to describe the several new Allotments or Divisions to be made, and Premises that shall be exchanged by Virtue of this Act, and which shall express the Quantity of each Allotment in Acres, Roods, and Perches, together with the Names of the respective Proprietors at the Time of such Division and Allotment; which said Maps and Plans shall be annexed to and inrolled with the said respective Award, and shall be deemed and construed in every Respect as and for Part of the said Award.

Commissioners may annex Maps to the Award, which shall be deemed Part thereof.

XXXVI. And be it further enacted, That such Commissioner or Commissioners shall, and he or they is and are hereby required to enter in a Book to be provided for that Purpose, a particular Account of all Sums of Money whatever received from the Proprietors or others during the Progress of the Inclosure; and also of all the Charges, Expences, and Disbursements which shall accrue or be made by Virtue of any such Act, and in carrying the same into Execution; which Book of Accounts shall be kept at the Office of their Clerk, open at all seasonable Times during the Progress of the Inclosure, and till the Accounts are finally settled, for the Inspection of any of the Proprietors, without Fee or Reward; and in Case any such Commissioner or Commissioners, or his or their Clerk, shall neglect to provide and keep such Book of Accounts as aforesaid, or refuse the Inspection thereof to any of the Proprietors at seasonable Times in Manner before-mentioned, and shall be convicted thereof, upon the Oath of one or more credible Witness or Witnesses not interested in the intended Division and Inclosure, before any Justice of the Peace of the County in which the Lands or Grounds to be inclosed shall be situate, or of such other County or Place where such Commissioner or Clerk so offending shall be or reside, every such Commissioner or Clerk so causing such Neglect or Refusal, and convicted as aforesaid, shall forfeit and pay for every such Offence any Sum not exceeding ten Pounds nor less than five Pounds, to be levied, recovered, and and applied in the same Manner as other Penalties are by this Act directed to be levied, recovered, and applied.

Commissioners shall keep Account of all Monies, which may be inspected at their Clerk's Office gratis.

Penalty on Neglect from 10l. to 5l.

XXXVII. And be it further enacted, That all Monies to be raised under and by Virtue of the Powers contained in any such Act, shall, from Time to Time, as often as the same shall amount to the Sum of fifty Pounds, be paid to and deposited in the Hands of some Banker, or such Person or Persons as shall be approved by a Majority in Value of the Proprietors who may be present at the first Meeting of such Commissioner or Commissioners; and in the Notice of which Meeting shall be expressed the Intention of then appointing such Banker, or such other Person or Persons; and no such Monies deposited or paid into the Hands of such Banker, or other Person or Persons to be appointed as aforesaid, shall be issued or paid by him or them, without an Order in Writing under the Hands of such Commissioner or Commissioners, specifying the Person or Persons to whom the same are respectively payable, and the Service or Consideration for which the same are due; and the Balance, if any, upon the final Settlement of Accounts, shall be immediately repaid to the Land Owners in Proportion to the Sums respectively paid by them.

Monies raised shall be deposited as directed by a Majority in Value of Proprietors, and not issued without Order from Commissioners.

XXXVIII. And be it further enacted, That it shall be lawful for the Rector or Vicar for the Time being of any Parish wherein the

Lands and Grounds intended to be inclosed shall be situate, by Indenture or Indentures, under his Hand and Seal, with the Consent and Approbation of the Bishop of the Diocese, and of the Patron of the said Rectory or Vicarage, to lease or demise all or any Part or Parts of the Allotment or Allotments to be set out and allotted to any such Rector or Vicar, by Virtue of any such Act, to any Person or Persons whomsoever, for any Term not exceeding twenty-one Years, to commence within twelve Calendar Months next after the executing the Award; so that the Rent or Rents for the same shall be thereby reserved to the Rector or Vicar for the Time being, by four equal Quarterly Payments in every Year; and so that there be thereby also reserved and made payable to such Rector or Vicar, the best and most improved Rent or Rents that can reasonably be had or gotten for the same, without taking any Fine, Foregift, Premium, Sum of Money, or other Consideration, for the making or granting any such Lease or Demise; and so that no such Lessee by any such Lease or Demise be made dispunishable for Waste, by any express Words to be therein contained; and so that there be inserted in every such Lease, Power of Re-entry on Non-payment of the Rent or Rents to be thereby reserved, within a reasonable Time to be therein limited, after the same shall become due; and so that a Counterpart of such Lease be duly executed by the Lessee or Lessees to whom such Lease shall be so made as aforesaid; and every such Lease shall be valid and effectual, any Law or Usage to the contrary notwithstanding.

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The Rector or Vicar with the Consent of the Bishop of the Diocese, and of the Patron of the Living, may lease Allotments for 21 Years, upon certain Conditions.

XXXIX. And be it further enacted, That all Penalties and Forfeitures imposed by this or any such Act, or which shall be imposed by such Commissioner or Commissioners under or by Virtue of the Authority of this or any such Act, shall be levied and recovered before any one Justice of the Peace for the County in which the Lands or Grounds to be inclosed shall be situate, and residing near any such Parish, and not interested in the Matter in Question; for which Purpose it shall be lawful for any such Justice of the Peace, upon Complaint made to him, to summon the Party accused, and the Witnesses on both Sides; and upon the Appearance or Contempt of the Party accused, to examine such Witnesses upon Oath, (which Oath any such Justice is hereby empowered to administer,) and upon such Evidence to give Judgment accordingly, and to condemn the Party accused (Proof of the Accusation being made by one or more Witness or Witnesses as aforesaid,) in such Penalties and Forfeitures as the Offenders shall have incurred, and to levy such Penalties and Forfeitures by Distress and Sale of the Offender's Goods and Chattels, together with reasonable Costs; all which Penalties and Forfeitures, the Application whereof is not particularly directed by any such Act or this Act, shall, when and so soon as the same shall be levied, be paid and applied to and for such Uses, Intents, or Purposes, as such Commissioner or Commissioners, in and by any Writing or Writings under his or their Hands, or in and by his or their Award, shall order, direct, or appoint.

Penalties shall be recoverable before one Justice,

and applied according to Direction of Commissioners.

XL. And be it further enacted and declared, That nothing in such Act contained shall lessen, prejudice, or defeat the Right, Title, or Interest of any Lord or Lady of any Manor or Lordship, or reputed Manor or Lordship, within the Jurisdiction or Limits whereof the Lands and Grounds thereby directed to be divided and allotted are situate, lying, and being, of, in, or to the Seigniories, Rights, and Royalties incident or belonging to such Manor or Lordship, or reputed Manor or Lordship, or to the Lord or Lady thereof, or to any Person or Persons claiming under him or her, but the same (other than and except the Interest and other Property as is or are meant or intended to be barred by such Act) shall remain, in as full, ample, and benefi-

Saving of the Rights of Lords of Manors.

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cial Manner, to all Intents and Purposes, as he or she might or ought to have held or enjoyed such Rights before the passing of such Act, or in case the same had never been made.

General Saving.

XLI. Saving always to the King's most Excellent Majesty, his Heirs and Successors, and to all and every other Person and Persons, Bodies Politick and Corporate, and his, her, and their Heirs, Successors, Executors, and Administrators, all such Estate, Right, Title, and Interest, (other than and except such as are hereby intended to be barred, destroyed or extinguished) as they, every, or any of them, had or enjoyed of, in, to, or out of, or in Respect of the said Lands, Grounds, and Premises so directed to be divided, allotted, and inclosed, or exchanged as aforesaid, before the passing of such Act, or could or might have had or enjoyed in case the same had never been made.

Two Justices may take Affidavits of the Notices required having been given, &c. in the Forms in the Schedule, without Stamps.

XLII. And be it further enacted, That it shall and may be lawful for any two or more Justices of the Peace to take Affidavits on Oath or Affirmation (which Oath or Affirmation such Justices are hereby authorized and empowered to administer) of the Notices required for such Bills having been given, of the Consents of the Parties interested therein, of the Allegations contained in the Preambles of such Bills, and of the Quantity of the Land to be inclosed; and that such Affidavits shall respectively be in the Forms contained in the Schedule hereunto annexed, as near as the Circumstances of the Case will admit; and that such Affidavits shall not be subject or liable to any Stamp Duties whatsoever.

Persons forswearing themselves shall be deemed guilty of Perjury.

XLIII. And be it further enacted, That if any Person or Persons shall, in any Examination, Affidavit, Deposition, or Affirmation, to be had or taken in pursuance of this Act, before such Justice or Justices, or such Commissioner or Commissioners, knowingly and wilfully swear or affirm any Matter or Thing which shall be false or untrue, every such Person so offending shall, on Conviction thereof, be deemed guilty of Perjury, and shall suffer the like Pains and Penalties as Persons guilty of wilful and corrupt Perjury are now subject and liable to.

How far this Act shall be binding.

XLIV. Provided always, and be it enacted, That all and every the Powers, Authorities, Directions, and Provisions in this Act contained, shall be only so far effective and binding in each particular Case, as they or any of them shall not be otherwise provided and enacted in any such Act hereafter to be passed as aforesaid.

SCHEDULE to which the ACT refers.

(A).

FORM OF AFFIDAVIT OF NOTICES.

A. B. of   maketh Oath and saith, [*or, being one of the People called Quakers*, upon his solemn Affirmation, saith] That he did see a Copy of the Notice hereunto annexed, affixed on the Church Door of the Parish of   in the County of   [*or*, on the several Church Doors of the respective Parishes of   in the County of   *or*, in the several Counties of   and   ] on the several *Sundays* hereinafter men-

tioned; *videlicet* [*specifying the Days on which the Notices were affixed.*] No. 7.
Signed *A. B.* 41 G. III. c. 109.

Sworn, [*or*, solemnly affirmed] before us, two of his Majesty's Justices of the Peace acting in and for the and subscribed in our Presence, by the above named *A. B.* this Day of in the Year As Witness our Hands and Seals.

(B).

FORM OF AFFIDAVIT OF CONSENT.

A. B. of maketh Oath and saith, [*or, being one of the People called Quakers,* upon his or her solemn Affirmation, saith] That he [*or* she] believes himself [*or* herself] to be interested in the proposed Inclosure of the in the [*here describe the Place, whether Parish, Hamlet, or Place*] in the County of by Virtue of [*here set forth the Interest of the Deponent*]; [*or*] that he [*or* she] believes that *C. D.* of for whom he [*or* she] is Guardian [*et cetera, as the Case may be*] is interested, *et cetera*; and that he [*or* she] hath seen a Copy of an Act [*here set forth the Title of this Act*] and also a Copy of the Bill intended to be presented to Parliament, and hath subscribed his [*or* her] Name or hath set his [*or* her] Mark to the same respectively, and doth consent to the said Bill being passed into a Law.

Signed or marked *A. B.*

Sworn [*or*, solemnly affirmed] before us, two of his Majesty's Justices of the Peace, acting in and for the and subscribed in our Presence, by the above mentioned *A. B.* this Day of in the Year
As Witness our Hands and Seals.

The same Form may be applied, *mutatis mutandis*, to the Case of several Persons whose Interests are joint, or whose Interests, though distinct, are of a similar Nature.

(C).

FORM OF AFFIDAVIT OF ALLEGATIONS OF THE BILL.

A. B. of maketh Oath and saith, [*or, being one of the People called Quakers,* upon his or her solemn Affirmation, saith] That [*here set forth such of the several Facts alledged in the Preamble of the Bill as are within the Knowledge of the Witness*], *or*, that he [*or* she] is informed and verily believes that [*here set forth such of the said Facts as are within the Belief of the Witness.*]

Signed *A. B.*

Sworn [*or*, solemnly affirmed] before us, two of his Majesty's Justices of the Peace, acting in and for the and subscribed in our Presence, by the above named *A. B.* this Day of in the Year
As Witness our Hands and Seals

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(D).

FORM OF AFFIDAVIT OF ADMEASUREMENT.

A. B. of maketh Oath and saith, [*or, being one of the People called Quakers,* upon his solemn Affirmation, saith] That he has surveyed and admeasured the several Lands in the Parish or Hamlet of in the County of [*or,* Counties of] described in the Bill intended to be presented to Parliament, and signed by the Deponent, by the Name [*or* Names] of and that the Quantity of such Lands amount to and no more, according to such Admeasurement, and the best of this Deponent's Judgment.

A. B.

Sworn [*or,* solemnly affirmed] before us, two of his Majesty's Justices of the Peace acting in and for the and subscribed in our Presence by the above named *A. B.* this Day of in the Year

As Witness our Hands and Seals.

Part II. Class IV.

JOINT-TENANTS, COPARCENERS, AND TENANTS IN COMMON. *

No. 1.

13 Edward I. c. 22.—Waste maintainable by one Tenant in common against another.

CUM duo vel plures teneant boscum turbariam piscariam vel alia hujusmodi in communi absque hoc quod aliquis sciat suum seperale & aliquis eorum faciat vastum contra voluntatem alterius moveatur actio per breve de Vasto & habeat defendens cum

'WHEREAS two or more do hold Wood, Turf-land, or Fishing, or other such Things in common, wherein none knoweth his several, and some of them do Waste against the Minds of the other, an Action may lie by a Writ of Waste; and when it

13 Edw. I. c. 22. 21 Ed. 3. f. 29. Fitz. Waste, 25, 96 2 Inst. 403. Co. Lit. 200. 52 H. 3, c. 23. 6 Ed. 1, c. 5.

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* Partition is often enforced by Suit in Equity, and such was for a considerable Time the more usual course, but the Proceeding by Writ of Partition is now very frequent, and is attended with the Advantage of operating upon the Estate itself, whereas a Court of Equity can only direct Conveyances. In Parker v. Gerard, Ambl. 236—Nevis v. Levene, cited ibid, it was held, that the Partition must be at the equal Expence of the Parties, however unequal their Shares, and although one Party offered to relinquish his Share rather than incur the Expence—but this Opinion has not been followed.—See Calmady v. Calmady, 2 Vesey, jun. 568.—See also a full Discussion of the Subject in a very complicated Case, Agar v. Fairfax, 17 Vesey, 533. In Barry v. Nash, 1 V. & B. 351, it is laid down, that upon a Bill for Partition there are no Costs to the Hearing, and that the Costs of the Partition and Conveyances are to be borne in Proportion to the Interests. It might be a considerable Improvement of the Law to authorize Courts of Equity to effect Partitions which should be binding upon the legal Estates of Infants and absent Persons, and to award the Sale of Interests not conveniently susceptible of division. The Irish Statute, 9 W. III. c. 12, contains Provisions nearly similar to those of the English Statute, 8 & 9 W. c. 31, with the Addition of some useful Provisions respecting the Mears and Fences of the Lands allotted in Partition. The Irish Statute, 8 Geo. I. c. 5, obliges Proprietors and Tenants of neighbouring Lands to make Fences between their several Holdings, and the Statute 5 Geo. II. c. 9, Ir. contains Provisions for the Partition of Bogs.—See 1 Gabbett, 477 to 487.

As to Partition between Parceners, &c. of Advowsons to present by Turns, see Statute 7 Anne, c. 18, ante Part I. Class II. No. 17.

See also 4 Anne, c. 16, (ante Class I.) Section 27, as to Actions of Account by one Tenant in common against another.

No. 1.
13 Edw. I. c. 22

ad judicium venerit electionem capiendi partem suam in certo loco per vicecomitem & visum & sacramentum & assignationem vicinorum ad hoc electorum & juratorum vel quod concedat quod nichil capiet decetero in hujusmodi bosco turbaria & aliis nisi secundum quod participes sui capere voluerint. Et si eligat capere partem suam in certo loco assignetur ei in sua parte locus vastatus secundum quod fuit antequam vastum fecit. Breve in hoc casu, *Cum A. & B. tenent boscum pro indiviso B. fecit vastum, &c.*

'is come unto Judgement, the 'Defendant shall choose either to 'take his Part in a Place certain, 'by the Sheriff, and by the View, 'Oath, and Assignment of his 'Neighbours sworn and tried for 'the same Intent, or else he shall 'grant to take Nothing from 'henceforth in the same Wood, 'Turf-land, and such other, but 'as his Partners will take. And 'if he do choose to take his Part 'in a Place certain, the Part 'wasted shall be assigned for his 'Part, as it was before he com'mitted the Waste. And there is 'such a Writ in this Case, that is 'to say, Cum A. & B. tenent 'boscum pro indiviso, B. fecit vas'tum, &c.

No. 2.

31 Henry VIII. c. 1.—For Joint-Tenants and Tenants in Common.

31 H. VIII. c. 1.
Godbolt 84, pl. 97.
Keilw. 208, b. 211, b.

'FORASMUCH as by the common Laws of this Realm divers of 'the King's Subjects, being seised of Manors, Lands, Tene'ments and Hereditaments, as Joint-Tenants, or as Tenants in 'Common with other, of any Estate of Inheritance, in their own 'Rights, or in the Right of their Wives, by Purchase, Descent, or 'otherwise, and every of them so being Joint-Tenants, or Tenants in 'Common, have like Right, Title, Interest and Possession in the 'same Manors, Lands, Tenements and Hereditaments, for their 'Parts or Portions jointly or in common undividedly together with 'other; and none of them by the Law doth or may know their 'several Parts or Portions in the same, or that that is his or theirs, 'by itself undivided, and cannot by the Laws of this Realm otherwise 'occupy or take the Profits of the same, or make any Severance, 'Division or Partition thereof, without either of their mutual Assents 'and Consents; by Reason whereof divers and many of them, being 'so jointly and undividedly seised of the said Manors, Lands, Tene'ments and Hereditaments, oftentimes of their perverse, covetous 'and malicious Minds and Wills, against all Right, Justice, Equity, 'and good Conscience, by Strength and Power, not only cut and 'fallen down all the Woods and Trees growing upon the same, but 'also have extirpated, subverted, pulled down and destroyed all the 'Houses, Edifices and Buildings, Meadows, Pastures, Commons, 'and the whole Commodities of the same, and have taken and con'verted them to their own Uses and Behoofs, to the open Wrong and 'Disherison and against the Minds and Wills of other holding the 'same Manors, Lands, Tenements and Hereditaments jointly or in 'common with them, and they have been always without assured 'Remedy for the same.

Vin. Abr. V. 14. 740 to 539.

Joint-Tenants and Tenants in Common are compellable to make Partition by Writ.

II. Be it therefore enacted by the King our most dread Sovereign Lord, and by the Assent of the Lords Spiritual and Temporal, and by the Commons, in this present Parliament assembled, That all Joint-Tenants and Tenants in Common, that now be, or hereafter

shall be, of any Estate or Estates of Inheritance in their own Rights, or in the Right of their Wives, of any Manors, Lands, Tenements or Hereditaments within this Realm of *England, Wales*, or the Marches of the same, shall and may be coacted and compelled, by Virtue of this present Act, to make Partition between them of all such Manors, Lands, Tenements and Hereditaments, as they now hold, or hereafter shall hold as Joint-Tenants or Tenants in Common, by Writ *De participatione facienda*, in that Case to be devised in the King our Sovereign Lord's Court of Chancery, in like Manner and Form as Coparceners by the common Laws of this Realm have been and are compellable to do, and the same Writ to be pursued at the Common Law. 2 Bulst. 114.

No. 2. 31 H. VIII. c. 1. Extended to Joint Tenants, &c. for Life or Years by 32 H. 8. c. 32. Co. pl. f. 410. Raymond, 249. Dyer, 128, 450, b. Bro. Partit. 38, 42. Cro. El. 759. Cro. Car. 44.

III. Provided alway, and be it enacted, That every of the said Joint-Tenants or Tenants in Common, and their Heirs, after such Partition made, shall and may have Aid of the other of their Heirs, to the Intent to dereign the Warranty paramount, and to recover for the Rate, as is used between Coparceners after Partition made by the Order of the Common Law; any Thing in this Act contained to the contrary notwithstanding.

Every of the Joint Tenants and Tenants in Common shall have Aid of the other. Hob. 179. 6 Co. 12.

No. 3.

32 Henry VIII. c. 32.—Joint-Tenants for Term of Life or Years.*

'FORASMUCH as in the Parliament begun at *Westminster* the 'Twenty-eighth Day of *April*, and there continued till the Twen-'ty-eighth Day of *June*, the Thirty-first Year of the King's most noble 'and victorious Reign that now is, it was amongst other Things there 'enacted and established, That all Joint-Tenants and Tenants in 'Common, that then were, or hereafter should be of any Estate or 'Estates of Inheritance in their own Rights, or in the Right of their 'Wives, of any Manors, Lands, Tenements or Hereditaments within 'this Realm of *England, Wales*, or Marches of the same, shall and 'may be coacted and compelled by Virtue of the said Act, to make 'Partition between them of all such Manors, Lands, Tenements and 'Hereditaments as they then held, or hereafter should hold as Joint-'Tenants or Tenants in Common, as more at large appeareth by the 'said Statute: And forasmuch as the said Statute doth not extend to 'Joint-Tenants and Tenants in Common, for Term of Life or Years, 'neither to Joint-Tenants or Tenants in Common, where one or some 'of them have but a particular Estate for Term of Life or Years, 'and the other have Estate or Estates of Inheritance of and in any 'Manors, Lands, Tenements and Hereditaments:' Be it therefore enacted by the King our Sovereign Lord, and by the Assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same, That all Joint-Tenants and Tenants in Common, and every of them, which now hold, or hereafter shall hold, jointly or in common for Term of Life, Year or Years, or Joint-Tenants or Tenants in Common, where one or some of them have or shall have Estate or Estates for Term of Life or Years, with the other that have or shall have Estate or Estates of

32 H. VIII. c. 32. 31 H. VIII. c. 1. Joint-Tenants, and Tenants in Common for Lives or Years, shall make Partition.

2 Bulst. 114. 1 Leon. 162.

Joint-Tenants for Life or Years are compellable to make Partition. Bro. Partition, 38, 41. Co. Lit. 1715, a. 187, a. Dyer, 77, pl. 7. 179, pl. 43. Cro. Car, 44.

* See Barry v. Nash, 1 V. & B. as to Suits in Equity for Partition by Lessees for Years, in which (intalia) it was held, that no Objection can be made to such Partition from the Minuteness of the Interest, the Inconvenience, Difficulty, or Reluctance of the other Tenants in Common.

No. 3.
32 H. VIII. c. 32.

Inheritance or Freehold in any Manors, Lands, Tenements or Hereditaments, shall and may be compellable from henceforth, by Writ of Partition to be pursued out of the King's Court of Chancery, upon his or their Case or Cases, to make Severance and Partition of all such Manors, Lands, Tenements and Hereditaments which they hold jointly or in common for Term of Life or Lives, Year or Years, where one or some of them hold jointly or in common for Term of Life or Years with other, or that have an Estate or Estates of Inheritance of Freehold.

Partition to be prejudicial to none but Parties.
Co. Ent. 412, b.

II. Provided alway, and be it enacted, that no such Partition or Severance hereafter to be made by Force of this Act, be, nor shall be, prejudicial or hurtful to any Person or Persons, their Heirs or Successors, other than such which be Parties unto the said Partition, their Executors or Assigns.

No. 4.

8 & 9 William III. c. 31.—An Act for the easier obtaining Partitions of Lands in Coparcenary, Joint-Tenancy, and Tenancy in Common.

8 & 9 W. III. c. 31.
31 H. 8, c. 1.
32 H. 8, c. 32.

'WHEREAS the Proceedings upon Writs of Partition between 'Coparceners by the Common Law or Custom, Joint-Tenants, 'and Tenants in Common, are found by Experience to be tedious, 'chargeable, and oftentimes ineffectual, by Reason of the Difficulty of 'discovering the Persons and Estates of the Tenants of the Manors, 'Messuages, Lands, Tenements, and Hereditaments, to be divided, 'and the defective or dilatory executing and returning of the Process 'of Summons, Attachment and Distress, and other Impediments, in 'making and establishing of Partitions, by Reason of which divers 'Persons having undivided Parts or Purparts are greatly oppressed and 'prejudiced, and the Premises are frequently wasted and destroyed, or 'lie uncultivated and unmanured, so that the Profits of the same are 'totally or in a great Measure lost:' For Remedy whereof, be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the First Day of *May*, One Thousand Six Hundred Ninety-seven, after Process of *Pone* or Attachment returned upon a Writ of Partition, Affidavit being made by any credible Person of due Notice given of the said Writ of Partition to the Tenant or Tenants to the Action, and a Copy thereof left with the Occupier, or Tenant or Tenants, or if they cannot be found, to the Wife, Son or Daughter (being of the Age of One and Twenty Years or upwards) of the Tenant or Tenants, or to the Tenant in actual Possession, by Virtue of any Estate of Freehold, or for Term of Years, or uncertain Interest, or at Will, of the Manors, Lands, Tenements, or Hereditaments, whereof the Partition is demanded (unless the said Tenant in actual Possession be Demandant in the Action), at least Forty Days before the Day of Return of the said *Pone* or Attachment, if the Tenant or Tenants to such Writ, or any of them, or the true Tenant to the Messuages, Lands, Tenements, and Hereditaments as aforesaid, shall not in such Case, within Fifteen Days after Return of such Writ of *Pone* or Attachment, cause an Appearance to be entred in such Court where such Writ of *Pone* or Attachment shall be returnable, then in Default of such Appearance, the Demandant having entered

Vin. V. 14, 470 to 539.

After Process of Pone or Attachment returned on Writ of Partition,

if the Tenant do not enter an Appearance within 15 Days, Court may proceed to examine the Demandant's Title, &c.

his Declaration, the Court may proceed to examine the Demandant's Title, and Quantity of his Part and Purpart, and accordingly, as they shall find his Right, Part and Purpart to be, they shall for so much give Judgement by Default, and award a Writ to make Partition, whereby such Proportion, Part and Purpart may be set out severally; which Writ being executed after Eight Days Notice given to the Occupier, or Tenant or Tenants of the Premises, and returned, and thereupon final Judgement entred, (1) the same shall be good, and conclude all Persons whatsoever after Notice as aforesaid, whatever Right or Title they have, or may at any Time claim to have in any of the Manors, Messuages, Lands, Tenements and Hereditaments, mentioned in the said Judgement and Writ of Partition, although all Persons concerned are not named in any of the Proceedings, nor the Title of the Tenants truly set forth. No. 4. 8 & 9 W. III c [illegible]

II. Provided always, That if such Tenant or Person concerned, or either of them, against whom, or their Right or Title, such Judgement by Default is given, shall, within the Space of One Year after the first Judgement entred, or in Case of Infancy, Coverture, *Non sanæ Memoriæ*, or Absence out of the Kingdom, within One Year after his, her or their Return, or the Determination of such Inability, apply themselves to the Court by Motion where such Judgement is entered, and shew a good and probable Matter in Bar of such Partition, or that the Demandant hath not Title to so much as he hath recovered, then in such Case the Court may suspend or set aside such Judgement, and admit the Tenant and Tenants to appear and plead, and the Cause shall proceed according to due Course of Law, as if no such Judgement had been given: And if the Court upon hearing thereof, shall adjudge for the first Demandant, then the said first Judgement shall stand confirmed, and be good against all Persons whatsoever, except such other Persons as shall be absent or disabled as aforesaid; and the Person or Persons so appealing, shall be awarded thereupon to pay Costs, or if within such Time or Times aforesaid, the Tenants or Persons concerned, admitting the Demandant's Title, Parts, and Purparts, shall shew to the Court an Inequality in the Partition, the Court may award a new Partition to be made, in Presence of all Parties concerned (if they will appear) notwithstanding the Return and filing upon Record the former, which said Second Partition returned and filed shall be good and firm for ever against all Persons whatsoever, except as before excepted.

If Tenant or others shall, in One Year after Judgement entred, &c. shew a good Matter in Bar of such Partition, &c the Court may set aside such Judgement

III. And be it further enacted by the Authority aforesaid, That no Plea in Abatement shall be admitted or received in any Suit for Partition, nor shall the same be abated by Reason of the Death of any Tenant.

No Plea in Abatement to be admitted.

IV. And be it further enacted by the Authority aforesaid, That when the High Sheriff, by Reason of Distance, Infirmity, or any other Hindrance, cannot conveniently be present at the Execution of any Judgement in Partition, in such Case the Under Sheriff, in Presence of Two Justices of the Peace of the County where the Lands, Tenements, or Hereditaments, to be divided do lie, shall and may proceed to Execution of any Writ of Partition, by Inquisition in due Form of Law, as if the High Sheriff were then personally present; and the High Sheriff thereupon shall, and is hereby enabled and required to make the same Return, as if he were personally present at such Execution; And in case such Partition be made, returned and filed, he or they that were Tenant or Tenants of any of the said Messuages, Lands, Tenements and Hereditaments, or any Part or Purpart thereof,

Under Sheriff, in Presence of Justices, may act for High Sheriff

Tenants before the Division to be Tenants under the same Conditions, &c.

(1) See a Proceeding under this Provision, Halton v. Earl of Thanet, 2 Bl. Rep. 1154, 1159.

No. 4.
8 & 9 W. III. c. 31.

before they were divided, shall be Tenant or Tenants for such Part set out severally to the respective Landlords or Owners thereof, by and under the same Conditions, Rents, Covenants, and Reservations, where they are or shall be so divided, and the Landlords and Owners of the several Parts and Purparts so divided and allotted as aforesaid shall warrant and make good unto the respective Tenants, the said several Parts severally, after such Partition, as they are or were bound to do by any Copy, Leases, or Grants of their respective Parts before any Partition made; and in case any Demandant be Tenant in actual Possession to the Tenant to the Action for his Part and Proportion, or any Part thereof, in the Messuages, Lands, Tenements and Hereditaments, to be divided by Virtue of a Writ of Partition as aforesaid, for any Term of Life, Lives, or Years, or uncertain Interest, the said Tenant shall stand and be possessed of the said Purparts and Proportions for the like Term, and under the same Conditions and Covenants when it is set out severally in Pursuance of this or any other Act, Statute, or Law to that Purpose.

Sheriffs, Under Sheriffs, &c. to give due Attendance for executing Writs of Partition, &c.

V. And be it further enacted by the Authority aforesaid, That the respective Sheriffs, their Under Sheriffs and Deputies, and in case of Sickness or Disability in the High Sheriff, all Justices of Peace, within their respective Divisions, shall give due Attendance to the executing such Writ of Partition, unless reasonable Cause be shewn to the Court upon Oath, and there allowed of, or otherwise be liable every of them to pay unto the Demandant such Costs and Damages as shall be awarded by the Court, not exceeding Five Pounds, for which the Demandant or Plaintiff may bring his Action in any of his Majesty's Courts of Record at *Westminster*, wherein no Essoin, Protection, Privilege, or Wager of Law, shall be allowed, nor any more than One Imparlance; and in case the Demandant shall not agree to pay unto the Sheriffs or Under Sheriffs, Justices and Jurors, such Fees as they shall respectively demand for their Pains and Attendance in the Execution of the same, and returning thereof, then the Court shall award what each Person shall receive, having Respect to the Distance of the Place from their respective Habitations, and the Time they must necessarily spend about the same, for which they may severally bring their Actions as aforesaid.

This Act to continue for 7 Years.

VI. Provided always, That this Act shall continue for Seven Years, and from thence to the End of the next Session of Parliament, and no longer. [Made perpetual by 3 & 4 Ann. c. 18. sect. 2.]

Part II. Class V.

MORTMAIN AND CHARITABLE USES.

No. 1.

9 Henry III. (Magna Charta,) c. 36.—No Land shall be given in Mortmain.

NEC liceat decetero alicui dare terram suam domui religiose ita quod illam resumat de eadem domo tenendam. Nec liceat alicui domui religiose terram alicujus sic accipere quod tradat illam illi a quo eam recepit tenendam. Si quis autem decetero terram suam alicui domui religiose sic dederit & super hoc convincatur donum suum penitus cassetur & terra illa domino illius feodi incurratur.

'IT is not lawful from henceforth to any to give his Lands to any Religious House, and to take the same Land again to hold of the same House. Nor shall it be lawful to any House of Religion to take the Lands of any, and to lease the same to him of whom he received it. If any from henceforth give his Lands to any Religious House, and thereupon be convict, the Gift shall be utterly void, and the Land shall accrue to the Lord of the Fee.'

9 H. III. c. 36.
Fitz. Mortm. 1, 3.
Bro. Mortm. 36.
2 Inst. 74.
Wood's Inst. 301.

Enforced & amended by 7 Ed. 1, st. 2. 13 Ed. 1, st. 1, c. 32.

No. 2.

7 Edward I. Stat. 2. c. 1.—Who shall take the Forfeiture of Lands given in Mortmain.

Ex Rot. in Turr. Lond. *m.* 47.

REX Justic' suis de Banco salutem. Cum dudum provisum fuisset quod viri religiosi feoda aliquorum non ingrederentur sine licentia & voluntate capitalium dominorum de quibus feoda illa immediate tenentur & viri religiosi postmodum nichilominus tam feoda sua propria quam aliorum hactenus ingressi sint ea sibi appropriando & emendo & aliquando ex dono aliorum recipiendo per quod servicia que ex hujus

"THE King to the Justices of his Bench greeting, where of late it was provided, That Religious Men should not enter into the Fees of any without Licence and Will of the chief Lord, of whom such Fees be holden immediately; and notwithstanding such Religious Men have entered as well into their own Fees, as into the Fees of other Men, approprying and buying them, and sometime receiving them of the Gift of others, whereby the Services

7 Ed. 1, st. 2, c. 1.
9 H. 3, stat. 1, c. 36. 1 Roll. 154, 157, 457.
2 Roll. 170.
9 H. 3, stat. 1 & 2, c. 36.
8 H. 4, 15.
41 Ed. 3, 16, 21.
47 Ed. 3, 11.
Bro. Mortmain, 15, 16, 18, 20. 24, 27, 31, 38. 39, 41, 43.
50 Ed. 3, 22

No. 2.
7 Ed. I. c. 1.

Fitz Mortmain, 13 Co. Lit. 2. b. 11 Ed. 4, 13 Fitz. Formedon, 57 Fitz. Quare, Imp. 163.

No Land shall be aliened in Mortmain upon Pain of the Forfeiture, &c. 2 Bulstr. 187. 3 Bulstr. 47.

Who shall take the Benefit of the Forfeiture.

"that are due of such Fees, and "which at the Beginning were "provided for Defence of the "Realm, are wrongfully with-"drawn, and the chief Lords do "leese their Eschetes of the "same;" 'We therefore to the 'Profit of our Realm, intending 'to provide convenient Remedy, 'by the Advice of our Prelates, 'Earls, and other liege Men of 'our Kingdom, being of our 'Council, have provided, made, 'and ordained, That no Person, 'Religious or other, whatsoever 'he be that will, buy or sell any 'Lands or Tenements, or under 'the Colour of Gift or Lease, or 'that will receive by Reason of 'any other Title, whatsoever it 'be, Lands or Tenements, or by 'any other Craft or Engine will 'presume to appropre to himself, 'under Pain of Forfeiture of the 'same, whereby such Lands or 'Tenements may any wise come 'into Mortmain. We have pro-'vided also, That if any Person, 'Religious or other, do presume 'either by Craft or Engine to of-'fend against this Statute, it shall 'be lawful to us and other chief 'Lords of the Fee immediate, to 'enter into the Land so aliened, 'within a Year from the Time of 'the Alienation, and to hold it in 'Fee as an Inheritance. And if 'the chief Lord immediate be 'negligent, and will not enter into 'such Fee within the Year, then 'it shall be lawful to the next 'chief Lord immediate of the 'same Fee to enter into the same 'Land within half a Year next 'following, and to hold it as be-'fore is said; and so every Lord 'immediate may enter into such 'Land, if the next Lord be negli-'gent in entering into the same 'Fee, as is aforesaid.' And if all 'the chief Lords of such Fees, 'being of full Age, within the 'four Seas, and out of Prison, be 'negligent or slack in this Behalf, 'for one whole Year, we imme-'diately after the Year accom-'plished, from the Time that such 'Purchases, Gifts, or Appropria-'tions hap to be made, shall take

modi feodis debentur & que ad defensionem regni ab initio provisa fuerunt indebite [illegible]trahuntur & domini capitales escaetas suas inde amittunt. Nos super hoc pro utilitate regni congruum remedium provideri volentes de consilio Prelatorum Comitum & aliorum fidelium regni nostri de consilio nostro existentium providimus statuimus & ordinavimus quod nullus religiosus aut alius quicumque terras aut tenementa aliqua emere vel vendere aut sub colore donationis aut termini vel alterius tituli cujuscumque ab aliquo recipere aut alio quovis modo arte vel ingenio sibi appropriare presumat sub forisfactura eorundem per quod ad manum mortuam terre & tenementa hujusmodi deveniant quoquo modo. Providimus etiam quod si quis religiosus aut alius contra presens statutum aliquo modo arte vel ingenio venire presumpserit liceat nobis & aliis immediatis capitalibus dominis feodi taliter alienati illud infra annum a tempore alienationis hujusmodi ingredi & tenere in feodo & hereditate. Et si capital' dominus immediatus negligens fuerit & feod' hujusmodi ingredi noluerit infra annum tunc liceat proximo capitali domino mediato feodi illius infra dimidium annum sequentem feodum illud ingredi & tenere sicut predictum est, & sic quilibet dominus [illegible] faciat si propinquior dominus in ingrediendo hujusmodi feod' negligens fuerit ut predictum est. Et si omnes hujusmodi capitales domini hujusmodi feodi qui plene fuerint etatis & infra quatuor maria & extra prisonam per unum annum negligentes vel remissi fuerint in hac parte nos statim post annum completum a tempore quo hujusmodi emptiones donationes aut alias appropriationes fieri contigerit terras

& tenementa hujusmodi capiemus in manum nostram & alios inde feoffabimus per certa servicia nobis inde ad defensionem regni nostri facienda salvis capitalibus dominis feodorum illorum wardis escaetis & aliis ad ipsos pertinentibus ac serviciis inde debitis & consuetis. Et ideo vobis mandamus quod statutum predictum coram vobis legi & decetero firmiter teneri & observari faciatis. T. R. apud West' xv. die Novembr' anno &c. septimo.

'such Lands and Tenements into our Hand, and shall infeoff other therein by certain Services to be done to us for the Defence of our Realm; saving to the chief Lords of the same Fees their Wards and Eschetes, and other Services thereunto due and accustomed. And therefore we command you, that ye cause the foresaid Statute to be read before you, and from henceforth to be kept firmly and observed. Witness Myself at *Westminster* the Fifteenth Day of *November*, the Seventh Year of our Reign.'

No. 2.
7 Ed. 1. st. 2, c. 2.

Enforced and amended by
13 Ed. 1, st. 1, c. 32.
18 Ed. 3, st. 3, c. 3.
34 Ed. 1, st. 3.

No. 3.

13 Edward I. st. 1, c. 32.—Mortmain by Recovery of Land by Default.

CUM viri religiosi & alie persone ecclesiastice implacitent aliquem & implacitatus fecerit defaltam ob quam tenementum amittere debeat quia Justiciarii hucusque timuerunt quod si implacitatus fecerit defaltam per collusionem ut cum petens occasione statuti per titulum doni aut alterius alienationis seisinam de tenemento consequi non posset per illam defaltam consequeretur & fieret fraus statuto ordinatum est per Dominum Regem & concessum quod in hoc casu postquam defalta facta fuerit inquiratur per patriam utrum petens habeat jus in sua petitione aut non. Et si compertum fuerit quod petens jus habet in sua petitione procedatur ad judicium pro petente & recuperet seisinam suam. Et si jus non habuerit incurratur tenementum proximo domino feodi si illud petat infra annum a tempore inquisitionis capte. Et si infra annum non petat superiori domino incurratur si petat infra dimidium annum post illum annum. Et sic habeat quilibet domi-

"WHEN Religious Men and other Ecclesiastical Persons do implead any, and the Party impleaded maketh Default, whereby he ought to leese the Land, forasmuch as the Justices have thought hitherto, that if the Party impleaded make Default by Collusion, that where the Demandant, by Occasion of the Statute, could not obtain Seisin of the Land by Title of Gift, or other Alienation, he shall now by Reason of the Default, and so the Statute is defrauded;" 'it is ordained by our Lord the King, and granted, That in this Case, after the Default made, it shall be inquired by the Country, whether the Demandant had Right in the Thing demanded, or no. And if it be found that the Demandant had Right in his Demand, the Judgment shall pass with him, and he shall recover Seisin; and if he hath no Right, the Land shall accrue to the next Lord of the Fee, if he demand it within a Year from the Time of the Inquest taken; and if he do not demand it within the Year, it shall accrue to the next Lord above, if he do demand it within half a Year after the same Year;

13 Ed. I. st. 1, c. 32.

7 Ed. 1, stat. 2.
2 Inst. 428.

Fitz. Col. 1, 2, 4, 5, 6, 7, 9, 10, 11, 22, 24, 25, 26, 27, 31, 40, 42, 46.
10 H. 7, f. 3.
11 Ed. 3, st. 3, c. 3.

No. 3. 13 Ed. I. st. 1, c. 32.

'and so every Lord after the next Lord shall have the Space of half a Year to demand it successively, until it come to the King, to whom at Length, through Default of other Lords, the Land shall accrue. And to challenge the Jurors of the Inquest, every of the chief Lords of the Fees shall be admitted, and likewise for the King, they that will shall challenge; and after the Judgement given, the Land shall remain clear in the King's Hands, until it be dereigned by the Demandant, or some other chief Lord, and the Sheriff shall be charged to answer therefore at the Exchequer.'

Every chief Lord may challenge the Jurors.

9 H. 3, stat. 3, c. 36.

nus post proximum dominum spacium dimidii anni ad petendum successive quousque perveniatur ad Regem cui ad ultimum pro defectu aliorum dominorum tenementum incurratur. Et ad calumpniandum juratores inquisitionis admittantur quicumque capitales domini feodorum & similiter pro Rege qui calumpniare voluerit & remaneat terra postquam judicium clarum fuerit in manu Domini Regis quousque tenementum per petentem vel aliquem capitalem dominum disrationetur & oneretur vicecomes ad respondendum inde ad Scaccarium.

No. 4.

13 Edward I. st. 1, c. 33.—Lands where Crosses be set, shall be forfeited as Lands aliened in *Mortmain*.

13 Ed. I st. 1. c. 33.

2 Inst. 431.

"FORASMUCH as many "Tenants set up Crosses, or "cause to be set up in their Lands, "in Prejudice of their Lords, that "Tenants should defend themselves against the chief Lords of "the Fee, by the Privileges of "Templars and Hospitalers;" it 'is ordained, That such Lands 'shall be forfeit to the chief 'Lords, or to the King, in the 'same Manner as is provided for 'Lands aliened in *Mortmain*.'

QUIA multi tenentes erigunt cruces in tenementis suis aut erigi permittunt in prejudicium dominorum suorum ut tenentes per privilegium Templariorum & Hospitelariorum tueri se possint contra capitales dominos feodorum statutum est quod hujusmodi tenementa capitalibus dominis aut Regi incurrantur eodem modo quo statuitur alibi de tenementis alienatis ad mortuam manum.

No. 5.

34 Edward I. st. 3.—That Lands shall not be aliened in Mortmain, where there be Mesnes, without their Consent.

34 Ed. I. st. 3.

9 H. 3, st. 1, c. 36. 7 Ed. 1, st. 2. 13 Ed. 1, st. 1, c. 32. Ordin. de libertat. perquir. 27 Ed. I.

'TOUCHING the King's 'Grant to be made upon 'Inquests returned into the Chancery for Lands to be aliened into '*Mortmain*, the King commandeth, that Nothing shall be done '(where there be any Lords mean) 'except the Religious Persons can 'shew to our Lord the King their

DE concessione Domini Regis facienda super inquisitionibus returnatis in Cancellaria de terris ad manum mortuam ponendis Rex precipit quod nihil fiat ubi medii sunt nisi religiosi ostendant eorum assensum Domini Regi per literas patentas eorun-

dem mediorum sigillis signatas Et etiam quod nihil fiat ubi donator penes se nihil retinet Et similiter ubi inquisitiones facte sunt & returnate sine warranto videlicit brevi originali returnato cum inquisitione Et similiter nisi breve originale mentionem faciat de singulis secundum novam formam per ipsum Regem adjectis, &c.

'Assent under their Patents sealed with their Seals; and that Nothing shall pass in Case where the Donor reserveth Nothing to himself. And likewise where Inquisitions be made and returned without Warrant, that is to wit, the Writ Original returned with the Inquest, and likewise unless the Writ Original make Mention of every Thing, according to the new Ordinance devised by the King.' (1)

No. 5.
34 Ed. I. st. 3.

(1) See 7 & 8 W. III. c. 37, post No. 10.

No. 6.

18 Edward III. st 3, c. 3.—Prelates impeached for purchasing Lands in Mortmain.

ITEM qe si Prelatz clers beneficez ou gentz de religion qouut purchacez terres & les ount mys a mort meyn soient empeschez ou aresonez sur ceo devant noz Justices & ils monstront noz chartres de licence & processe sur ceo fait par enqueste Ad quod dampnum ou de nostre grace ou par fin qils soient lessez franchement en pees saunz estre outre empeschez pur la dite purchace. Et en cas qil ne purront sufficialment monstrer qils ne soient entrez par due processe apres la licence a eux grante en general ou especial qils soient bonement resceux a faire covenable fyn & qe lenquerrie de cest article cesse de tout solonc lacordement pris en cest parlement.

'ITEM, If Prelates, Clerks beneficed, or Religious People, which have purchased Lands, and the same have put to Mortmain, be impeached upon the same before our Justices, and they shew our Charter of Licence, and Process thereupon made by an Inquest of *Ad quod damnum*, or of our Grace, or by Fine, they shall be freely let in Peace, without being further impeached for the same Purchase. And in Case they cannot sufficiently shew, that they have entered by due Process after Licence to them granted in general or in special, that they shall be well received to make a convenient Fine for the same; and that the Enquiry of this Article shall wholly cease according to the Accord comprised in this Parliament.'

18 Ed. III. st. 3, c. 3
7 Ed. 1, st. 2.
18 Ed. 1, st. 1, c. 3.
1 Ed. 3, st. 2, 12.

No. 7.

15 Richard II. c. 5.—Assurance of Lands to certain Places, Persons, and Uses, shall be adjudged *Mortmain*.

ITEM come tenuz soit en lestatut de Religiouses qe null religious nautre queconqe achate ne vende ou souz colour de doun ou

"ITEM, Whereas it is contained in the Statute *De Religiosis*, That no Religious, nor other whatsoever he be, do buy or sell, or under Colour of

15 Richd. II c. 5
7 Ed. I. st. 2.

No. 7.
15 Richd. II. c. 5.

It is within the Compass of the Statute of Mortmain to convert any Land to a Church-yard.

Mortmain where some be seised of Lands to the Use of religious or spiritual Persons.

" Gift, or Term, or any other " Manner of Title whatsoever, " receive of any Man, or in any " Manner by Gift or Engine cause " to be appropriated unto him " any Lands or Tenements, upon " Pain of Forfeiture of the same, " whereby the said Lands and " Tenements in any Manner " might come to *Mortmain*. And " if any Religious, or any other, " do against the said Statute by " Art or Engine in any Manner, " that it be lawful to the King, " and to other Lords, upon the " said Lands and Tenements to " enter, as in the said Statute " doth more fully appear. And " now of late by subtile Imagina- " tion, and by Art, and Engine, " some religious Persons, Parsons, " Vicars, and other spiritual Per- " sons, have entered in divers " Lands and Tenements, which " be adjoining to their Churches, " and of the same, by Sufferance " and Assent of the Tenants, have " made Church-yards, and by " Bulls of the Bishop of *Rome* " have dedicated and hallowed " the same, and in them do make " continually Parochial Burying " without Licence of the King " and of the chief Lords;" 'there- ' fore it is declared in this Parlia- ' ment, That it is manifestly ' within the Compass of the said ' Statute. And moreover it is ' agreed and assented, That all ' they that be possessed by Feoff- ' ment, or by other Manner, to ' the Use of religious People, or ' other spiritual Persons, of Lands ' and Tenements, Fees, Advow- ' sons, or any Manner other Pos- ' sessions whatsoever, to amortise ' them, and whereof the said reli- ' gious and spiritual Persons take ' the Profits, that betwixt this and ' the Feast of St. *Michael* next ' coming, they shall cause them ' to be amortised by the Licence ' of the King and of the Lords, or ' else that they shall sell and ' aliene them to some other Use ' between this and the said Feast " upon Pain to be forfeited to the ' King, and to the Lords, accord- ' ing to the Form of the said

terme ou dautre title queconqe dascun resceive ou dascun en ascune manere par art ou par engyn a luy face appropriet ascunes terres ou tenementz sur forfaiture dycelles par quoi les ditz terres & tenementz purront en ascune manere devenir a mort mayn. Et qe si ascun religious ou ascun autre veigne encontre le dit estatut par art ou par engyn en ascune manere bien lise au Roi & as autres Seignurs les ditz terres & tenementz entrer sicome en le dit estatut est contenuz plus au plein. Et ore de novell par sotile ymagination & par art & engyn ascuns gentz de religion parsons vikers & autres persones espiritiels sont entrez en diverses terres & tenementz adjoignantz a lour esglise & dycelles par suffrance & assent de tenantz ont fait cimiters & par bulles de appostoill les ont fait dedier & sacrer ffi sepulture parochiele font continuelment en ycelles sanz licence du Roi & des chiefs Seignurs declare est en cest present parlemente qe ce est overtement en cas du dit estatut. Et enoutre accordez est & assentuz qe toutz ceux qe sont possessionez par feoffement ou par autre voie al oeps de gentz de religion ou autres persones espiritiels des terres tenementz fees advoesons ou autres possessions queconqes pur les amortiser & dont les ditz religiouses & persones espiritiels preignent les profitz qe parentre cy & le fest de Seint Michel prochein venant ils les facent estre amortisez par licence du Roi & des Seignurs ou autrement qils les vendent & alienent a autre oeps parentre cy & le dit fest sur peine destre forfaitz au Roi & as Seignurs solonc la fourme de lestatut de re-

ligious come tenementz purchasez par gentz de religion & qe de cez temps enavant null tiel purchase se face issint qe tielx religiouses ou autres persones espiritiels ent preignent les profitz come desuis sur la peine avauntdite. Et mesme cest estatut sextende & soit tenuz de toutz terres & tenementz fees advoesons & autres possessions purchacez & a purchasers al oeps des gildes & fraternitees. Et enoutre est assentuz pur ce qe mairs baillifs & communes de citees burghs et autres villes qont commune perpetuel et autres qont offices perpetuels sont aussi perpetuels come gentz de religion qe de cest temps enavaunt ils ne purchacent a eux et a lour commune ou office sur la peine contenue en le dit estatut de religiouses. Et de ce qe autres sont possessionez ou ferra purchacez en temps avenir a lour oeps et ils ent preignent ou prendront les profitz soit semblablement fait come devaunt est dit de gentz de religion.

'Statute of Religious, as Lands 'purchased by religious People: 'And that from henceforth no 'such Purchase be made, so that 'such religious or other spiritual 'Persons take thereof the Profits, 'as afore is said, upon Pain aforesaid. And that the same Statute 'extend and be observed of all 'Lands, Tenements, Fees, Advowsons, and other Possessions, 'purchased, or to be purchased to 'the Use of Gilds or Fraternities. 'And moreover it is assented, because Mayors, Bailiffs, and Commons of Cities, Boroughs, and 'other Towns which have a perpetual Commonalty, and others 'which have Offices perpetual, 'be as perpetual as People of Religion, that from henceforth they 'shall not purchase to them, and 'to their Commons or Office, upon Pain contained in the said 'Statute *De Religiosis*. And 'whereas others be possessed, or 'hereafter shall purchase to their 'Use, and they thereof take the 'Profits, it shall be done in like 'Manner as is aforesaid of People 'of Religion.'

No. 7. 15 Richd. II. c. 5.

Mortmain to purchase Lands to Gilds, Fraternities, Offices, Commonalties.

Mortmain in respect of taking of Lands in Use.

No. 8.

23 Henry VIII. c. 10.—An Act for Feoffments and Assurances of Lands and Tenements made to the Use of any Parish Church, Chapel, or such like.*

'WHERE by Reason of Feoffments, Fines, Recoveries, and 'other Estates, and Assurances, made of Trusts, of Manors, 'Lands, Tenements, and Hereditaments, to the Use of Parish 'Churches, Chapels, Church-Wardens, Guilds, Fraternities, Commonalties, Companies, or Brotherheads erected and made of Devotion, or by common Assent of the People without any Corporation, 'and also by Reason of Feoffments, Fines, Recoveries, Wills, and 'other Acts made to any Uses aforesaid, or to the Uses and Intents 'to have Obites perpetual, or a continual Service of a Priest for ever, 'or for Threescore, or Fourscore Years, founden of the Issues and 'Profits of the Manors, Lands, Tenements, and Hereditaments, 'whereof such Feoffments, Fines, Recoveries, Wills, and other Acts 'been made, or that the Feoffees, Conisees, Recoverers, or other 'Persons, and their Heirs thereof seised, shall take, levy, receive, 23 H. VIII

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* See the Cases on this Statute, Comyn's Uses, M. See also St. 1 Ed. VI. c. 14, for Churches Collegiate, and Smart v. Prujean, 567—De Garner v. Lawson, 4 Vesey, 433—Da Costa v. Depas, Ambl. 228—Cary v. Abbott, 7 Vesey, 490.

No. 8. H. VIII. c. 10. 'and perceive, or cause or suffer to be taken, levied, and perceived 'the Issues, Revenues, and Profits thereof, and the same to dispose, 'pay, convert, or otherwise imploy or suffer, or cause to be disposed, 'paid, converted, or imployed to any such Uses, Intents, or Purposes, as have been above specified, or to any other like Uses and 'Intents; there groweth and ensueth to the King our Sovereign Lord, 'and to other Lords and Subjects of the Realm, the same like Losses 'and Inconveniencies, and is as much prejudicial to them, as doth, 'and is, in Case where Lands be aliened into Mortmain.'

II. Be it therefore enacted by the King our Sovereign Lord, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That all and every such Uses, Intents, and Purposes, of what Name, Nature, or Quality they shall be called, that shall be devised, covenanted, made, declared, or in any wise ordained, after the First Day of *March*, in the Three and twentieth Year of the Reign of our Sovereign Lord King HENRY the Eighth, by any Feoffee, Recoverer, or Consee, or by any other Person or Persons to whose Use any such Feoffee, Recoverer, or Consee shall be seised, of any Manors, Lands, Tenements, or Hereditaments, or of the Issues, Revenues, and Profits of them, or any of them, shall be utterly void, and of no Strength, Virtue, nor Effect in the Law.

A[ssura]nces of Lands to Church, Chapels, &c. void. Cro. El. 288. 11 Co. 71.

III. Provided alway, That it shall be lawful to every Person, being seised of any Manors, Lands, Tenements, or Hereditaments, to his own proper Use, or having Feoffees, Recoverors, or Consees to his Use, to make, ordain, or devise, or cause to be made, ordained, or devised, any of the Uses, Intents, and Purposes above specified, in such Manner as they might have done before the making of this Act, and as if this Act had never been had ne made, so that no such Uses, Intents, or Purposes to be so made, ordained, or devised after the said First Day of *March*, be not in any wise made, ordained, devised, or appointed, to endure, continue, or abide by any Craft, Colour, Terms, Sentences, Clauses, Words, or other Means, above the Term of Twenty Years next after the first making and beginning of any such Uses, Intents, or Purposes.

Proviso for Assurance of Lands to Church, &c. for 20 Years.

IV. And it is further enacted, That if any Person or Persons, in Defraud of this Statute, bind or ordain any their Heirs or Successors, or any other Person or Persons, that they shall suffer such Uses, Intents, and Purposes to endure and continue, contrary to this Act, upon Pains or Penalties of Losses of any other Lands, Tenements, or Hereditaments, or of any other Thing or Things, or do attempt or devise by any Colour, Craft, or Means, any Thing or Things, to make any such Uses, Intents, or Purposes to be declared, contrary to the true Meaning of this Act, to continue or abide for any longer Time or Season than is above limited for the same; that then every such Pain, Penalty, Craft, Colour, and every other Thing and Things, of what Kind, Nature, or Quality soever it be that shall be so made, ordained, or devised in Defraud of this Act, shall be utterly void in the Law to all Intents; and that this Statute shall be always interpreted and expounded, as beneficially as may be, to the Destruction and utter avoiding of such Uses, Intents, and Purposes therein above remembered, and of all other like Uses and Intents, otherwise than only after such Manner as is afore by this present Act provided.

Collateral Assurance in defraud of the Statute shall be void.

V. Provided always, That in such Cities, and Towns Corporate, where by their ancient Customs they have good and lawful Authorities to devise into Mortmain their Lands, Tenements, and Hereditaments, within the same Cities or Towns Corporate, that this Act shall not be in any wise prejudicial or hurtful to any such Custom.

Custom of Cities and Towns to devise Lands saved.

VI. Provided always, That this Act, ne any Thing therein contained, shall extend, or be in any wise prejudicial, to hinder or impair any such Ordinances, Devices, or Declarations of Uses, as shall hereafter be made and declared in Writing, by the Executors of the Testaments and last Wills of *Robert Jannis* and *John Terry*, late Aldermen of the City of *Norwich*, now deceased, or by the Executors or the Survivor of the Executors of either of them, of any Lands, Tenements, or Hereditaments, not amounting in the whole above the clear yearly Value of Forty Pounds, to be imployed and converted to and for the Discharge of Tolls and Customs within the said City, and at the Gates of the same, for the Discharge of the poor People within the same City, of Taxes and Tallages hereafter to be assessed and levied, and for the cleansing of the Streets of the same City, or for any of the said good Purposes, according to the true Intents and Meanings of the said last Wills and Testaments, and either of them; so that the same Ordinances, Devices, and Declarations be had, made, and certified in Writing into the King's Court of *Chancery*, within Two Years next ensuing the Feast of *Easter* next coming.

No. 8. 23 H. VIII. c. 10. Proviso for the Devises of the Executors of Jannis and Terry of the City of Norwich.

No. 9.

43 Elizabeth, c. 4.—An Act to redress the Mis-employment of Lands, Goods, and Stocks of Money heretofore given to certain charitable Uses.*

'WHEREAS Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money and Stocks of Money, 'have been heretofore given, limited, appointed and assigned, as well 'by the Queen's most excellent Majesty, and her most noble Pro'genitors, as by sundry other well disposed Persons; some for Relief 'of aged, impotent and poor People, some for Maintenance of sick 'and maimed Soldiers and Mariners, Schools of Learning, Free 'Schools, and Scholars in Universities, some for Repair of Bridges, 'Ports, Havens, Causways, Churches, Sea-Banks and Highways, 'some for Education and Preferment of Orphans, some for or towards 'Relief, Stock or Maintenance for Houses of Correction, some for 'Marriages of poor Maids, some for Supportation, Aid and Help of 'young Tradesmen, Handicraftsmen and Persons decayed, and others 'for Relief or Redemption of Prisoners or Captives, and for Aid or 'Ease of any Poor Inhabitants concerning Payments of Fifteens, set'ting out of Soldiers and other Taxes; which Lands, Tenements, 'Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money 'and Stocks of Money, nevertheless have not been employed according 'to the charitable Intent of the Givers and Founders thereof, by 'Reason of Frauds, Breaches of Trust, and Negligence in those that 'should pay, deliver and employ the same:' For Redress and Remedy whereof, Be it enacted by Authority of this present Parliament, That it shall and may be lawful to and for the Lord Chancellor or Keeper of the Great Seal of *England*, for the Time being, and for the Chancellor of the Duchy of *Lancaster* for the Time being for Lands within the County Palatine of *Lancaster*, from Time to Time to award Commissions under the Great Seal of *England* or the Seal of the County Palatine, as the Case shall require, into all or any Part or Parts of this

43 Eliz. c. 4. Commissioners authorized to enquire of Misemployment of Lands or Goods given to Hospitals, &c. Their Orders shall be performed. 2 Inst. 707. Vin. V. 4—476

Cro. Car. 526. Commissioners to enquire of the Gift of Lands & Goods, to charitable Uses. Four Commissioners at the l[illegible] Hob. 136.

* See the Doctrine which has been established in Respect of this Statute, in Duke's Charitable Uses, and the Summary thereof, Comyn's Uses, n. —See also Morris v. Bishop of Durham, 10 Vesey, 540.

No. 9. 43 Eliz. c. 4.

Realm respectively, according to their several Jurisdictions as a. re-said, to the Bishop of every several Diocese and his Chancellor, (in case there shall be any Bishop of that Diocese, at the Time of awarding of the same Commissions) and to other Persons of good and sound Behaviour, authorizing them thereby, or any four or more of them, to enquire as well by the Oaths of twelve lawful Men or more of the County, as by all other good and lawful Ways and Means, of all and singular such Gifts, Limitations, Assignments and Appointments aforesaid, and of the Abuses, Breaches of Trusts, Negligences, Mis-imployments, not imploying, concealing, defrauding, mis-converting or mis-government of any Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money or Stocks of Money heretofore given, limited, appointed or assigned, or which hereafter shall be given, limited, appointed or assigned, (1) to or for any the charitable and godly Uses before rehearsed: And after the said Commissioners or any four or more of them (upon calling the Parties interested in any such Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money and Stocks of Money) shall make Enquiry by the Oaths of twelve Men or more of the said County (whereunto the said Parties interested shall and may have, and take their lawful Challenge and Challenges), and upon such Enquiry, Hearing and Examining thereof, set down such Orders, Judgments and Decrees, as the said Lands, Tenements, Rents, Annuities, Profits, Goods, Chattels, Money and Stocks of Money, may be duly and faithful[illegible] nployed, to and for such of the charitable Uses and Intents be[illegible] rsed respectively, for which they were given, limited, [illegible] ppointed by the Donors and Founders thereof: Which [illegible] nents and Decrees, not being contrary or repugnant to [illegible] tutes or Decrees of the Donors or Founders, shall by [illegible] this present Parliament stand firm and good, accord-[illegible] nd Purport thereof, and shall be executed accord-[illegible] ne shall be undone or altered by the Lord Chancellor [illegible] d Keeper of the Great Seal of *England*, or the [illegible] ounty Palatine of *Lancaster*, respectively, within [illegible] ions, upon Complaint by any Party grieved to [illegible]

...e Enquiry.

The Commissioners Orders.

The Comm[illegible] rs Orders alt[illegible]

Colleges, Halls in Oxford or Cambridge, Westminster, Eaton, Winchester, Cathedral Churches, 1 Lev. 284.

[illegible] s, That neither this Act, nor any Thing the [illegible] n any wise extend to any Lands, Tenements, Rer[illegible] s, Goods, Chattels, Money or Stocks of Mon[illegible] pointed or assigned, or which shall be given, limite[illegible] ed, to any College, Hall or House of Learning wi[illegible] f *Oxford* or *Cambridge*, or to the Colleges of *Wes*[illegible] *inchester*, or any of them, or to any Cathedral o[illegible] within this Realm.

City, Town Corporate, College, Hospital, Free-School.

III. [illegible] hat neither this Act, nor any Thing the[illegible] in, sh[illegible] ity, to Town Corporate, or to any the Lands or T[illegible] Uses aforesaid within any such City or Town Co[illegible] is a special Governor or Governors appointed to [illegible] Lands, Tenements or Things disposed to any u[illegible] ither to any College, Hospital or

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(1) Under th[illegible] vould pass by Way of an Appointment, by a Mode of [illegible] ally valid, as by a Deed or Will of Tenant in Tail agains[illegible] —Tay v. Slaughter, Prec. Ch. 16. —So before, Statute o[illegible] a Devise of a Copyhold without Surrender—Attorney-G[illegible] Vesey, 225—but not by a Will since the Statute of Fra[illegible] —Attorney-General v. Baines, Prec. Ch. 270.

Free School, which have special Visitors (2) or Governors, or Overseers appointed them by their Founders. No. 9. 43 Eliz. c. 4.

IV. Provided also, and be it enacted by the Authority aforesaid, That neither this Act nor any Thing therein contained, shall be any way prejudicial or hurtful to the Jurisdiction or Power of the Ordinary, but that he may lawfully in every Cause execute and perform the same as though this Act had never been had or made. Ordinary's Jurisdiction.

V. Provided also, and be it enacted, That no Person or Persons that hath or shall have any of the said Lands, Tenements, Rents, Annuities, Profits, Hereditaments, Goods, Chattels, Money or Stocks of Money in his Hands or Possession, or doth or shall pretend Title thereunto, shall be named a Commissioner or a Juror for any the Causes aforesaid, or being named shall execute or serve in the same. None shall be Commissioner or Juror which hath any Part of the Lands or Goods in Question.

VI. And provided also, That no Person or Persons which hath purchased or obtained, or shall purchase or obtain, upon valuable Consideration of Money or Land, any Estate or Interest of, in, to or out of any Lands, Tenements, Rents, Annuities, Hereditaments, Goods or Chattels, that have been or shall be given, limited or appointed to any the charitable Uses above mentioned, without Fraud or Covin, having no Notice of the same charitable Use, shall not be impeached by any Decrees or Orders of the Commissioners above mentioned, for or concerning the same his Estate or Interest: And yet nevertheless, Be it enacted, That the said Commissioners, or any four or more of them, shall and may make Decrees and Orders for Recompence to be made by any Person or Persons who being put in Trust, or having Notice of the charitable Uses above-mentioned, hath or shall break the same Trust, or defraud the same Uses, by any Conveyance, Gift, Grant, Lease, Demise, Release or Conversion whatsoever, and against the Heirs, Executors and Administrators of him, them or any of them, having Assets in Law or Equity, so far as the same Assets will extend. Purchasers of the Lands bona fide. Recompence by those which break the Trust.

VII Provided always, That this Act shall not extend to give Power or Authority to any Commissioners before mentioned, to make any Orders, Judgments or Decrees, for or concerning any Manors, Lands, Tenements, or other Hereditaments assured, conveyed, granted or come unto the Queen's Majesty, to the late King HENRY the Eighth, King EDWARD the Sixth, or Queen MARY by Act of Parliament, Surrender, Exchange, Relinquishment, Escheat, Attainder, Conveyance or otherwise: And yet, nevertheless, Be it enacted, That if any such Manors, Lands, Tenements, or Hereditaments, or any of them, or any Estate, Rent or Profit thereof, or out of the same or any Part thereof, have or hath been given, granted, limited, appointed or assigned to or for any the charitable Uses before expressed, at any Time sithence the Beginning of her Majesty's Reign; That then the said Commissioners, or any four or more of them, shall and may, as concerning the same Lands, Tenements, Hereditaments, Estate, Rent or Profit so given, limited, appointed or assigned, proceed to enquire, and to make Orders, Judgments and Decrees, according to the Purport and Meaning of this Act, as before is mentioned; the said last mentioned Proviso notwithstanding. Land assured to King Henry VIII Edward VI Queen Mary and Queen Elizabeth.

VIII. And be it further enacted, That all Orders, Judgments, and Decrees of the said Commissioners, or of any four or more of them, shall be certified under the Seals of the said Commissioners, or any four or more of them, either into the Court of the Chancery of *England*, or into the Court of the Chancery within the County Palatine of *Lancaster*, as the Case shall require respectively, according Certifying of Orders.

(2) As to the Exposition of this Clause, see the Case of Kirkby Ravensworth, 8 East. 221—15 Vesey, 305, and the Cases there cited.

No. 9.
43 Eliz. c. 4.

to their several Jurisdictions, within such convenient Time as shall be limited in the said Commissions.

Order for the Execution of the Commissioners' Decree. Cro. Car. 40.

IX. And that the said Lord Chancellor or Lord Keeper and the said Chancellor of the Duchy, shall and may within their said several Jurisdictions, take such Order for the due Execution of all or any of the said Judgments, Decrees and Orders, as to either of them shall seem fit and convenient.

A Remedy for any Person grieved by the Commission Decree

X. And that if after any such Certificate or Certificates made, any Person or Persons shall find themselves grieved with any of the said Orders, Judgments or Decrees, That then it shall and may be lawful to and for them or any of them, to complain in that Behalf unto the said Lord Chancellor or Lord Keeper, or to the Chancellor of the said Duchy of *Lancaster*, according to their several Jurisdictions, for Redress therein: And that upon such Complaint, the said Lord Chancellor or Lord Keeper, or the said Chancellor of the Duchy, may according to their said several Jurisdictions, by such Course as to their Wisdoms shall seem meetest, the Circumstances of the Case considered, proceed to the Examination, Hearing and Determining thereof; (3) and upon hearing thereof shall and may annul, diminish, alter or enlarge the said Orders, Judgments and Decrees of the said Commissioners, or any four or more of them, as to either of them in their said several Jurisdictions shall be thought to stand with Equity and good Conscience, according to the true Intent and Meaning of the Donors and Founders thereof; and shall and may tax and award good Costs of Suit by their Discretions, against such Persons as they shall find to complain unto them without just and sufficient Cause, of the Orders, Judgments and Decrees before mentioned.

Cost of Suit against the Com

(3) In Saul v. Wilson, 2 Vern. 118, it is intimated, that a Decree founded on this Act is final, and that there can be no Re-hearing or Appeal to the House of Lords—but in 3 Bl. Com. 428, it is said, that the Proceeding is considered as an original Cause throughout, and that an Appeal lies of course, notwithstanding any loose Opinions to the contrary—and for which the learned Commentator refers to Duke, 62, 128—Burford v. Senthill, Ch. 9, May, 1743.

No. 10.

7 & 8 William III. c. 37.—An Act for the Encouragement of charitable Gifts and Dispositions.

7 & 8 W. III. c. 37.
9 Geo. 2, c. 36.

WHEREAS it would be a great Hindrance to Learning, and other good and charitable Works, if Persons well inclined may not be permitted to found Colleges or Schools for Encouragement of Learning, or to augment the Revenues of Colleges or Schools already founded, by granting Lands, Tenements, Rents, or other Hereditaments to such Colleges or Schools, or to grant Lands or other Hereditaments, to other Bodies Politick or incorporated now in being, or hereafter to be incorporated, for other good and publick Uses;' be it therefore enacted by the King's most Excellent Majesty by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall and may be lawful to and for the King, our most Gracious Sovereign Lord, and for his Heirs and Successors, when and as often, and in such Cases as his Majesty, his Heirs or Successors, shall think fit, to grant to any Person or Persons,

9 H. 3, c. 36.

The King may grant Licences to alien, or purchase in mortmain.

Bodies Politick or Corporate, their Heirs and Successors, Licence to alien in Mortmain, and also to purchase, acquire, take, and hold in Mortmain, in Perpetuity or otherwise, any Lands, Tenements, Rents or Hereditaments whatsoever, of whomsoever the same shall be holden. No. 10. 7 & 8 W. III c. 37.

II. And it is hereby declared, That Lands, Tenements, Rents, or Hereditaments, so aliened, or acquired and licensed, shall not be subject to any Forfeiture, for or by Reason of such Alienation or Acquisition. Lands so aliened not subject to Forfeiture.

No. 11.

9 George II. c. 36—An Act to restrain the Disposition of Lands, whereby the same become unalienable.

9 G.

'WHEREAS Gifts or Alienations of Lands, Tenements, or 'Hereditaments, in *Mortmain*, are prohibited or restrained by *Magna Charta*, and divers other wholesome Laws, as prejudicial to, 'and against the common Utility; nevertheless this publick Mischief 'has of late greatly increased by many large and improvident Alien- 'ations or Dispositions made by languishing or dying Persons, or by 'other Persons, to Uses called *Charitable Uses*, to take place after 'their Deaths, to the Disherison of their lawful Heirs;' For Remedy whereof be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the twenty-fourth Day of *June*, which shall be in the Year of our Lord One Thousand Seven Hundred and Thirty-six, (1) no Manors, Lands, Tenements, Rents, Advowsons, or other Hereditaments, Corporeal or Incorporeal whatsoever, (2) nor any Sum or Sums of Money, Goods, Chattels, Stocks in the publick Funds, Securities for Money, or any other Personal Estate whatsoever, to be laid out or disposed of in the Purchase of any Lands, Tenements, or Hereditaments, (3) shall be given, granted,

No Manors, Lands, &c. nor Money to be laid out in Lands, to be given for charitable Uses, unless by Deed indented, and executed before 2 Witnesses, 12 Months before the Death of the Donor and inrolled, &c.

(1) The Statute does not extend to Wills previously made, but a Republication of a Will, or a confirmatory Codicil, made after the Statute, renders the Dispositions void.—Willet v. Sandford, 1 Vesey, 178—Attorney-General v. Heartwell, Ambl. 451.

(2) The Statute has received a very extensive Construction, with Respect to the Subjects upon which it operates, as being Real Estate, and it is held to comprehend Money due on Mortgages—Attorney-General v. Meyrick, 2 Vesey, 44—even as forming a Part of a general Residue—Pickering v. Lord Stamford, 2 Vesey, jun. 272—(See also White v. Evans, 4 Vesey, 21); a Right to lay Mooring Chains in the Thames—Negus v. Coulter, Amb 367; a Sum secured by Mortgage of Turnpike Tolls—Knapp v. Williams, 4 Vesey, 430; or by the Bonds of the Commissioners of a Turnpike—Howse v. Chapman, 4 Vesey, 542; so Money secured by an Assignment of County Rates, under a special Act of Parliament—Finch v. Squire, 10 Vesey, 41. Although the Statute contains no express Words prohibiting a Bequest of Money, to be produced by the Sale of Land for Charitable Purposes, it is settled by Construction, that such a Bequest is within the Spirit and Meaning of the Law.—Per Sir Wm. Grant Curtis v. Hutton, 14 Vesey, 537.

(3) The Prohibition, as to Money to be laid out in Lands, extends to a Disposition to pay off the Mortgate on a Chapel—Corbyn v. French, 4 Vesey, 418; or to enable Trustees to complete a Purchase of Land, ibid. arg. In Widmore v. Woodroffe, Amb. 636, 1 Bro. Ch. 13, a Devise to the Corporation of Queen Anne's Bounty, was held void, because the Corporation are bound by their Rules, confirmed by the King under the Great Seal, to lay out

No. 11. aliened, limited, released, transferred, assigned, or appointed, or any
9 Geo. II. c. 36. ways conveyed or settled to or upon any Person or Persons, Bodies Politick or Corporate, or otherwise, for any Estate or Interest whatsoever, or any ways charged or incumbered by any Person or Persons whatsoever, in Trust, or for the Benefit of any charitable Uses what-

their Funds in the Purchase of Lands. It was urged, that a Power was reserved to the Crown to make new Rules, and the Point was suggested, whether, if such a Law were to be made, it would not extend to the Case; but by the Lord Chancellor, (Lord Camden,) the Rules are of force till they are altered, and were in Force at the Death of the Testator, when the Legacy was to take Place—and upon the Authority of this Case, a Disposition to the *Society for increasing Clergyman's Livings in England or Wales* was held void, as no other Society was deemed to meet the Description in the Will.—Middleton v. Clitheroe, 3 Vesey, 734. But now, by Statute 43 Geo. III. c 107, ante Part 1, Class 2, No. 29, Devises of Land to the Governors of Queen Anne's Bounty, are expressly allowed.

A Bequest of £300, to be laid out in the Purchase of Lands, or on some *real Security*, is void.—Attorney-General v. Bowles, 3 Atk. 806.

Where Money was given to be laid out in erecting a School, Lord Hardwicke intimated, that if any other Person would give a Piece of Land, the Money might be so applied, S. C. but the contrary Doctrine is now completely settled—and in the Attorney-General v. Nash, 3 Bro. Ch. 588, it was held, that a Bequest to build a House for a Schoolmaster was void, although the Trustees purchased Lands with their own Money, which they offered to give to the Charity. So a Bequest to erect and build a Hospital is void.—Attorney-General v. Heartwell, Amb. 451. So Vaughan v. Farrar, 2 Vesey, 182. A Bequest for the Purpose of erecting a free School void, although there was a Piece of vacant Land in Mortmain within the Parish, on which Part of a School-House stood, the Will not pointing at those Premises.—Attorney-General v. Hyde—Vide Case of Royston Free-School, Ambl. 751, 1 Bro. Ch. 144. Note.

A Bequest to build a new Parsonage-House is good—Ghibb v. Attorney-General, Amb. 373—and it is evident, from all the Cases, that a Disposition for Building upon or improving Land, already in Mortmain, is valid.—See the several Cases cited in the Attorney-General v. Parsons, 8 Vesey, 186.

Where there is a Discretion to invest Money in Land—or in a Manner not prohibited—as in Personalty (or in Land in Scotland, which is excepted in Sec. 6,) it seems to be agreed, that the Disposition is good, and in that Case the Trustees may exercise their Discretion, by investing the Money in Land.—Vi. Vaughan v. Farrar, 2 Vesey, 182—Grimmett v. Grimmett, Amb. 210—Soresby v. Hollins, and Grayson v. Atkinson, cited ibid—Curtis v. Hulton, 14 Vesey, 537. The Case of Grimmett v. Grimmett is a strong Case of Construction in Support of such Discretion. But where the Interest of £120 was to be paid to the Poor, and the Money was to be laid out in Land, as soon as the Trustees could meet with a Purchase, it was held, that the Direction to invest in Land was imperative, and the Disposition therefore void.—Englishe v. Orde, Highmore on Mortmain, 82.—See also Grieves v. Case, 4 Bro. 67. A Disposition to purchase Land for a Charity, "and in Case the Charity could not by Law take Place according to her Directions, to lay out the Money in such charitable Uses as near to her Intentions as could be, and the Laws would be—ruled to be fraudulent and void.—Attorney-General v. Tyndall, Amb. 614.

Where a Disposition of Land for charitable Purposes is void by the Statute, a personal Fund attached to it is void also—as a Gift of Houses, as Alms-Houses, for certain poor objects, and an annual Sum to each House.—Attorney-General v. Goulding, 2 Bro. Ch. 428, confirmed under Circumstances similar in Effect, Attorney-General v. Whitchurch, 3 Vesey, 141. So a Bequest of a Residue to purchase or build a Chapel, where the Executors might think it most wanted, and any Overplus to go to the Support of a Minister, not exceeding £20 a Year, and any further Overplus to such charitable Purposes as the Executors might think proper—the purchasing or building a Chapel, (which, according to the Cases above cited, could not be supported,) being the primary Object, the whole was void. See also, to the

soever; (4) unless such Gift, Conveyance, Appointment, or Settlement of any such Lands, Tenements, or Hereditaments, Sum or Sums of Money, or Personal Estate (other than Stocks in the publick Funds), be and be made by Deed indented, sealed, and delivered in the Presence of two or more credible Witnesses, twelve Calendar Months at least before the Death of such Donor or Grantor (including the Days of the Execution and Death), and be inrolled in his Majesty's High Court of Chancery, within six Calendar Months next after the Execution thereof; and unless such Stocks be transferred in the publick Books usually kept for the Transfer of Stocks, six Calendar Months at least before the Death of such Donor or Grantor (including

same Effect, Attorney-General v. Davies, 9 Vesey, 555. As to the Case of the Object of building a Chapel being left vague in Respect of the requisite Amount.—Chapman v. Brown, 6 Vesey, 404.

But a Disposition may be partly good and partly void when the Purposes are distinguishable—as where a Person, having founded Alms-Houses by a valid Deed, bequeathed a Sum of Money in Trust, to apply the Surplus Interest in rebuilding, repairing, altering, *adding to* or improving the Messuages or Tenements, Ground and Appurtenances before conveyed, the Disposition was declared valid, so far as the Money was to be applied in rebuilding, repairing, altering, or improving the Premises, and so far as the Additions should be made upon the Land before conveyed—but bad so far as any Addition should be made, by acquiring other Land.—Attorney-General v. Parsons, 8 Vesey, 186, Note. The discretionary Power of the Trustees seems not to have been adverted to. Where a Testatrix gave a House upon Trust, to deposit in it the Books thereafter given and purchased—and gave to Trustees all the religious Books which she might leave at her Death, and her personal Estate upon Trust, to apply the Residue of her Estate for the Use of the Welch Circulating Schools—and for the Increase and Improvement of Christian Knowledge, and promoting Religion as the Trustees should think proper—and to purchase new Bibles, &c. for such pious Uses as were intended concerning those already bought—and, in the mean Time, to deposit the said Bibles, &c. in the said House. The Disposition as to the personal Estate was sustained, the Lord Chancellor being of Opinion that the Charity was not so engrafted into, connected with, and placed upon an Establishment in real Property, that the Charity could not subsist, as the real Estate was so given—that the House was meant to be subservient to the Distribution of Books, but not necessarily connected with that Purpose.—Attorney-General v. Stepney, 10 Vesey, 22.

(4) In Durour v. Motteux, 1 Vesey, 320, a Testator devised £1200, or thereabouts, to be laid out in the Purchase of Land for certain charitable Uses confessedly void—the Remainder of the Lands [illegible] an Annuity of £10 to a Minister, to preach a Sermon to his Memory, and keep his Tomb-stone in Repair, and certain annual Sums to the Clerk and Sexton, and the Corporation of St. Albans, for keeping the Accounts. The whole was adjudged to be void. The Annuity to the Minister was a charitable Use which was not prevented by the Addition of the Sermon—so were the Annuities—and the rest was not only a vain Concommitant of the charitable Bequest, but a Circumstance attending the general Execution thereof; and if that Construction were not made, it might elude the Act of Parliament, for the Reward for doing those Offices might be as great as the Testator pleased; so the Gift to the Corporation was a Reward for their Service, and but a Circumstance attending the charitable Bequest; and though the keeping the Accounts was not void, yet if the Charity on which it was to attend was void, it must be so too. A Disposition to bring Water from A. to B. for the Use of the Inhabitants of a Town, is a Charity and void.—Jones v. Williams, Ambler, 651. So of Money from Land to be appropriated to the Improvement of a Town—House v. Chapman, 4 Vesey, 542; for the Purpose of establishing a Botanical Garden, the Testator declaring that he thought it would be a public Benefit.—Townley v. Bedwell, 6 Vesey, 194.

In Doe dem Philips v. Aldridge, 4 T. R. 264, Land was devised to Aldridge upon Trust, that he should convey the same to take place after his Decease for the Support of preaching the Word of God at the Meeting-house

No. 11.
9 Geo. II. c. 36.

the Days of the Transfer and Death), and unless the same be made to take Effect in Possession for the charitable Use intended, immediately from the making thereof, and be without any Power of Revocation, Reservation, (5) Trust, Condition, Limitation, Clause, or Agreement whatsoever, for the Benefit of the Donor or Grantor, or of any Person or Persons claiming under him.

The said Limitations not to extend to Purchases or Transfers made for valuable Considerations.

II. Provided always, That nothing herein before mentioned relating to the sealing and delivering of any Deed or Deeds, twelve Calendar Months at least before the Death of the Grantor, or to the Transfer of any Stock six Calendar Months before the Death of the

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at L——, and expressing that the Testator expected he would settle and forward every Thing to promote and carry on the Work of God at L——, both in his Lifetime and after his Decease, and it was held, that though the subsequent Limitation was void the Defendant's Life Estate was clearly good.

[There can be little Doubt, that if no Objection had existed to the Legality of the Devise, the Expression of the Expectature would have been deemed Imperative;—for which see several Cases cited in a Note to the Report; and in the Case next mentioned, Lord Commissioner Ashurst observed, that perhaps it was not so much looked into as it might have been. It appears also to have been decided in the Absence of Ashurst and Buller J. and with that kind of Hurry which is always to be regretted in the Administration of Justice.]

But in Grieves v. Case, 4 Bro. Ch. 67, 1 Vesey, Jun. 548, upon a Devise of Money to be laid out in Lands for Mendham for Life; afterwards as to Part for Eastaugh for Life; and as to the Remainder to the Preacher of a certain Chapel for the Time being, he and E. exchanging the Duty; and after the Decease of both, to the Preacher or Preachers at the Chapel, with a Proviso that if Mendham or Eastaugh should withdraw preaching at the Chapel, to go to the Preachers appointed in their Room, the Whole was determined to be void. And per Lord Commissioner Eyre, "It was argued that there was a Personal Bounty intended for M. and E. I agree that there was; but it is equally apparent, that it flowed from a Confidence in them in the Character of Ministers, and not in any other Way. Then it comes to the Question, whether if a Plain Trust and Disposition to a charitable Use is manifested by the Will, and intended throughout, but if that Disposition is also manifested with a certain Degree of Personal Bounty and Favour to particular Objects that will take the Case out of the Statute: but I am of Opinion, that if the Personal Bounty cannot be separated from the general Object, in Respect of which they are to have that Preference, it is not sufficient.

Upon a Devise to Trustees to take a House as a School, and that the Children and Grand Children of certain Relations of the Testator should be educated there, and then placed out as Apprentices; and that such other Boys and Girls should be placed there as the Trustees should think fit: the Disposition was held good so far as regarded the particular Relations coming in Esse within the Time allowed by Law; and void so far as it went to establish a Charity for General Purposes;—the Lord Chancellor declared he did not mean to prevent the Trustees from taking other Children as long as the School was to be kept open for the Children and Grand Children, Blandford v. Thackerell, 2 Vesey, Jun. 238, 4 Bro. Ch. 394; but see White v. White, 7 Vesey 423. Attorney General v. Price, 17 Vesey, 371. Isaac v. De Friez, note, ibid, in which Dispositions to poor Relations were sustained as general Charities.

In Curtis v. Hulton, 14 Vesey, 537, it was contended, that a Disposition of Land for charitable Purposes in Scotland or elsewhere out of England was good, but ruled contra.

(5) A Conveyance of Land subject to a perpetual Rent Charge to the Grantor for charitable Purposes, is apparently void, although the Rent Charge is intended as a full Equivalent, without any Purpose of Bounty on the Part of the Grantor. On this Account it was thought necessary under the Sanction of several Opinions of the first Eminence, to obtain an Act of Parliament to confirm the Title of the Manchester Infirmary. The Practice is to make a Grant or Demise in general Terms; and for the Grantees to make a subsequent Conveyance or Declaration of Trust.

No. 11.
9 Geo II c. 36.

Grantor or Person making such Transfer, shall extend, or be construed to extend, to any Purchase of any Estate or Interest in Lands, Tenements, or Hereditaments, or any Transfer of any Stock, to be made really and *bona fide* for a full and valuable Consideration actually paid at or before the making such Conveyance or Transfer without Fraud or Collusion. (6)

Gifts, &c made otherwise, absolutely void.

III. And be it further enacted by the Authority aforesaid, That all Gifts, Grants, Conveyances, Appointments, Assurances, Transfers, and Settlements whatsoever, of any Lands, Tenements, or other Hereditaments, or of any Estate or Interest therein, or of any Charge or Incumbrance affecting or to affect any Lands, Tenements, or Hereditaments, or of any Stock, Money, Goods, Chattels, or other Personal Estate, or Securities for Money to be laid out or disposed of in the Purchase of any Lands, Tenements, or Hereditaments, or of any Estate or Interest therein, or of any Charge or Incumbrance affecting or to affect the same, to or in Trust for any charitable Uses whatsoever, which shall at any Time from and after the said Twenty-fourth Day of *June* One Thousand Seven Hundred and Thirty-six, be made in any other Manner or Form than by this Act is directed and appointed, shall be absolutely, and to all Intents and Purposes null and void. (7)

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(6) A Contract for Sale of Land to a Charity upon which the Purchase Money was not paid in the Life of the Seller, not carried into Effect after his Death against his Heir at the Instance of the Charity and personal Representatives.—Attorney General v. Day, 1 Ves. 218.

(7) A Devisee in general Terms may be compelled to answer whether the Devise was made upon a secret Trust or Promise to apply the Property to charitable Uses; in which Case the Statute attaches. See Strickland v. Aldridge, 9 Vesey, 516, and the Authorities there cited; but if there is a Will in itself valid, and a subsequent unattested Paper not communicated to the Devisee, indicating the Purpose of the Testator to devote the Land to charitable Purposes, the Devisee may object that the Estate was devised by a Will well executed; and that the subsequent Paper was not well executed. See Adlington v. Cann, 3 Atk. 141.

It is settled that a Court of Equity will not marshal Assets so as to give a charitable Legacy a Preference in the Application of the personal Estates, and throw a greater Burthen on the Real Estate in Respect of Debts and other Legacies. Makeham v. Hooper, 4 Bro. Ch. 153, and the several Cases there cited. As to the Manner of apportioning the respective Funds, see the Attorney General v. the Earl of Winchelsea, 3 Bro. Ch. 3[illegible]. Howse v. Chapman, 4 Vesey, 542. Paice v. Archbishop of Cant. 14 Ves. 364.

In Arnold v. Chapman, 1 Vesey, 108. upon a Devise to J. S. he paying the Testator's Executors £1000, and the Residue of the Personal Estate to a Charity, it was ruled that the Legacy was intended as Part of the charitable Fund, and being void, enured for the Benefit of the Heir at Law. Grosvenor v. Hallam, cited 1 Bro. Ch. 61. Devise subject to a Rent upon Trust to sell and pay the Money as directed, the Rent being for charitable Purposes, belongs to the Heir at Law, and not to the Legatee of the Money. See this Case, Ambl. 643.

In Jackson v. Hurlock, Ambler 487, upon a Devise to S. M. subject to charitable Legacies, ruled that the Legacies sunk for the Benefit of the Devisee. So Wright v. Row, 1 Bro. Ch. 61. A void charitable Legacy of Personalty or Real Estate, converted out and out into Personalty, falls into the general Residue. Durour v. Motteux, 1 Ves. 321. So in Case of a Bequest of Leasehold Premises. Stanley v. Barker, 4 Vesey, 732, but upon Trust to sell and pay the Purchase Money, or a particular Part thereof, to a Charity, the Heir is entitled to the Amount given to the Charity. See Ackroyd v. Smithson, 1 Bro. Ch. 503 Gibbs v. Ramsey, 2 V. and B. 294. As to Funds provided for Charity Legacies being applied to make good a Deficiency of Assets for other Legacies. See Currie v. Pie, 17 Vesey, 462.

No. 11.
9 Geo. II. c. 36

But not to prejudice the two Universities, or the Colleges of Eton, Winchester, or Westminster.

IV. Provided always, That this Act shall not extend, or be construed to extend, to make void the Dispositions of any Lands, Tenements, or Hereditaments, or of any Personal Estate to be laid out in the Purchase of any Lands, Tenements, or Hereditaments, which shall be made in any other Manner or Form than by this Act is directed, to or in Trust for either of the two Universities within that Part of *Great Britain* called *England*, or any of the Colleges or Houses of Learning within either of the said Universities, or to or in Trust for the Colleges of *Eton*, *Winchester*, or *Westminster*, or any or either of them, for the better Support and Maintenance of the Scholars only upon the Foundations of the said Colleges of *Eton*, *Winchester*, and *Westminster*. (8)

No College to hold more Advowsons than shall be equal to one Moiety of their Fellows, &c.

V. Provided nevertheless, and be it enacted by the Authority aforesaid, That no such College or House of Learning, which doth or shall hold or enjoy so many Advowsons of Ecclesiastical Benefices as are or shall be equal in Number to one Moiety of the Fellows or Persons usually stiled or reputed as Fellows, or, where there are or shall be no Fellows or Persons usually stiled or reputed as Fellows, to one Moiety of the Students upon the Foundation, whereof any such College or House of Learning doth or may by the present Constitution of such College or House of Learning consist, shall, from and after the Twenty-fourth Day of *June*, One Thousand Seven Hundred and Thirty-six, be capable of purchasing, acquiring, receiving, taking, holding, or enjoying any other Advowsons of Ecclesiastical Benefices by any Means whatsoever; the Advowsons of such Ecclesiastical Benefices as are annexed to, or given for, the Benefit or better Support of the Headships of any of the said Colleges or Houses of Learning, not being computed in the Number of Advowsons hereby limited. (9)

This Act not to extend to Estates in Scotland.

VI. Provided always, That nothing in this Act contained shall extend, or be construed to extend, to the Disposition, Grant, or Settlement of any Estate, Real or Personal, lying or being within that Part of *Great Britain* called *Scotland*. (10)

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(8) In the Case of Christ's College, Cambridge, 1 Bl. 90, it was ruled that a Devise to certain Officers of the College to maintain certain Students there, and for other charitable Purposes, was good, as relating to the Students of the College; but void so far as the College were appointed Trustees for other charitable Purposes. By Stat. 51 Geo. III. c. 105, Dispositions in Favour of the Royal Naval Assylum are excepted out of this Act. There is also an Exception by Stat. 12 Geo. II. c. 31. in Favour of Bath Hospital; and probably there may be other Instances of a similar Nature.

In Middleton v. Cater, 4 Bro. Ch. 409, it seems to be taken for granted, that a Custom for the Freemen of London to devise in Mortmain would be good, notwithstanding the Statute; but it was decided that the Custom extends only to Land in London.

(9) Ruled that a Devise of Land to University College to buy Livings was good, although they had already the limited Number, as the Devise might be performed by the Exchange of Advowsons. Attorney General v. Green, 2 Bro. Ch. 492. This Section is repealed by 45 Geo. III. c. 101. See the next Number.

(10) Devise of Money to be laid out in Land in Scotland for charitable Purposes, good. Oliphant v. Hendrie, 1 Bro. Ch. 571. Mackintosh v. Townsend 16 Vesey, 330.

No. 12.

43 George III. c. 107.—An Act for effectuating certain Parts of an Act, passed in the second and third Years of the Reign of her late Majesty Queen ANNE, intituled, *An Act for the making more Effectual her Majesty's gracious Intentions for the Augmentation of the Maintenance of the Poor Clergy, by enabling her Majesty to grant in Perpetuity, the Revenues of the First Fruits and Tenths; and also for enabling any other Persons to make Grants for the same Purpose*, so far as the same relate to Deeds and Wills made for granting and bequeathing Lands, Tenements, Hereditaments, Goods, and Chattels, to the Governors of the Bounty of Queen ANNE, for the Purposes in the said Act mentioned, and for enlarging the Powers of the said Governors. [27th *July* 1803.]

[Inserted ante Part I. Class II. No. 29.]

No. 13.

45 George III. c. 101.—An Act to repeal so much of an Act, passed in the Ninth Year of the Reign of his late Majesty King GEORGE the Second, intituled, *An Act to restrain the Disposition of Lands, whereby the same become unalienable*, as restrains Colleges within the Two Universities of *Oxford* and *Cambridge* from purchasing or holding Advowsons, except as therein is provided. [10th *July* 1805.]

[Inserted ante Part I. Class II. No. 33.]

No. 14.

52 George III. c. 101.—An Act to provide a Summary Remedy in Cases of Abuses of Trusts created for Charitable Purposes. [9th *July*, 1812.]

'WHEREAS it is expedient to provide a more summary Remedy in Cases of Breaches of Trust created for charitable Purposes, as well as for the just and upright Administration of the same; Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the passing of this Act, in every Case of a Breach of any Trust or supposed Breach of any Trust created for charitable Purposes, or whenever the Direction

52 G. III

In Cases of Breach of Trust, Petition presented to Chancellor, &c. who shall hear the same in a summary way, and to make Order therein.

No. 14. 52 G. III. c. 101.

or Order of a Court of Equity shall be deemed necessary for the Administration of any Trust for charitable Purposes, it shall be lawful for any Two or more Persons to present a Petition to the Lord Chancellor, Lord Keeper, or Lords Commissioners for the Custody of the Great Seal, or Master of the Rolls for the Time being, or to the Court of Exchequer, stating such Complaint, and praying such Relief as the Nature of the Case may require; and it shall be lawful for the Lord Chancellor, Lord Keeper and Commissioners for the Custody of the Great Seal, and for the Master of the Rolls, and the Court of Exchequer, and they are hereby required to hear such Petition in a summary Way, and upon Affidavits or such other Evidence as shall be produced upon such hearing, to determine the same, and to make such Order therein, and with Respect to the Costs of such Applications as to him or them shall seem just; and such Order shall be final and conclusive, unless the Party or Parties who shall think himself or themselves aggrieved thereby shall, within Two Years from the Time when such Order shall have been passed and entered by the proper Officer, have preferred an Appeal from such Decision to the House of Lords, to whom it is hereby enacted and declared, that an Appeal shall lie from such Order. (1)

Appeal to House of Lords.

Petitions signed and certified, &c.

II. Provided always, and be it further enacted, That every Petition so to be preferred as aforesaid shall be signed by the Persons preferring the same, in the Presence of and shall be attested by the Solicitor or Attorney concerned for such Petitioners, and every such Petition shall be submitted to and be allowed by his Majesty's Attorney or Solicitor-General, and such Allowance shall be certified by him before any such Petition shall be presented.

Proceedings not liable to Stamp Duty

III. And be it further enacted, That neither the Petitions, nor any Proceedings upon the same or relative thereto, nor the Copies of any such Petitions or Proceedings, shall be subject or liable to the Payment of any Stamp Duty whatever.

(1) The Trustees of a Charity not appearing to the Petition, an Order was made that they should shew Cause why the Court should not make the Order prayed, or such other Order as to the Court should seem meet. Exparte Peagears, 1 V. and B. 496.

No. 15.

52 George III. c. 102.—An Act for the registering and securing Charitable Donations. [9th *July*, 1812.]

52 G. III. c. 102.

'WHEREAS charitable Donations have been given for the 'Benefit of poor and other Persons in *England* and *Wales* to a 'very considerable Amount, and many of the aforesaid Donations 'appear to have been lost, and others, from the Neglect of Payment 'and the Inattention of those Persons who ought to superintend 'them, are in Danger of being lost, or rendered very difficult to be 'preserved;' Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That a Memorial or Statement of the Real and Personal Estate, and of the Gross Annual Income, Investment, and the general and particular Objects of all and every Charity and Charities, and charitable Donations, for the Benefit of any poor or other Persons in any Place in *England* and *Wales*, which shall have been founded, established, made, benefited, increased or

Memorial of Deeds, &c. respecting Charitable Donations already founded registered.

secured, together with the Names of the respective Founders of or Benefactors thereto, where known, and also of the Person or Persons in whose Custody, Possession or Controul, the Deeds, Wills and other Instruments whereby such Charities or charitable Donations shall have been founded, established, made, benefited, increased or secured, may be, and also of the Names of the then Trustee or Trustees, Feoffee or Feoffees, Possessor or Possessors of such Real or Personal Estate, shall, from and after Six Calendar Months after the passing of this Act, be registered by such Person or Persons who shall then be the Trustee or Trustees, Feoffee or Feoffees, Possessor or Possessors thereof, or some or one of such Persons, in Manner and in the Form contained in the Schedule to this Act annexed, in the Office of the Clerk of the Peace of the County, or City or Town, being a County of itself, within which such poor or other Persons shall be; and such Memorial or Statement shall be signed by such Person or Persons causing the same to be registered and left in the said Office of such Clerk of the Peace, who shall forthwith transmit a Duplicate or Copy of the same unto the Enrolment Office of the High Court of Chancery.

No. 15.
52 G. III. c. 102.

II. And be it further enacted, That wherever any such Charity or charitable Donations shall be founded, established, made or benefited, increased or secured by any Deed, Will or other Instrument hereafter to be made or executed by any Person or Persons, that then a like Memorial or Statement, according to the Directions hereinbefore contained, shall be registered, and left and transmitted as aforesaid, by such Person or Persons as are hereinbefore mentioned, within Twelve Months after the Decease of such Person or Persons by whom any such Will, Deed or Deeds, or other Instrument shall have been made or executed.

The like of Charitable Donations hereafter founded.

III. And be it further enacted, That for the Purpose of such Registries of such Memorials or Statements, the Clerk of the Peace for the Time being of each and every County or City or Town, being a County of itself, or Riding within *England* and *Wales*, shall, as there shall be Occasion, provide proper Books of Parchment or Vellum, wherein such Registers shall be made and entered; and every such original Memorial or Statement, and every such Book provided as aforesaid, shall be carefully kept and preserved for public Use and Inspection in the Office to which it shall belong, together with a correct Index, to be made from Time to Time by such Clerk of the Peace, of such Charities and Charitable Donations, distinguishing each by the Name of the original or first Donor or Founder thereof, where known, or the Appellation or Title most generally used for such Charity or charitable Donations.

Clerks of the Peace to provide proper Books, wherein Registries made.

IV. And be it further enacted, That in Case the Persons to be benefited by any such Charity or charitable Donations as aforesaid shall not be wholly within any one County, then, and in such Case, such Clerk of the Peace of the County where any such Charity or charitable Donation shall be registered, shall forthwith notify in the *London Gazette* the Name or Title thereof, according to the Appellation or Title used in the Index aforesaid, and the Names of the several Places wherein the Objects of such Charity or Charitable Donations shall be, and the particular or general Objects thereof, and also the Name of the County wherein such Memorial or Statement shall have been registered.

Notice given in London Gazette if Persons benefited shall not be wholly within one County.

V. And be it further enacted, That if any such Charity or charitable Donation shall not be duly memorialized, stated and registered according to the Provisions of this Act, it shall and may be lawful for any Two Persons or more, interested in such Charity or charitable Donation, to present a Petition to the Lord Chancellor,

If Donations not registered Petition presented to Lord Chancellor, &c.

No. 15. 52 G. III. c. 102.

Lord Keeper, or Lords Commissioners for the Custody of the Great Seal, or Master of the Rolls for the Time being, or the Court of Exchequer, complaining thereof; and they are hereby required to hear such Petition in a summary Way, and upon Affidavits, or such other Evidence as shall be produced upon such hearing, to determine the same, and to make such Order therein, and with Respect to the Costs of such Application and Proceedings, as to him or them shall seem fit, and which Order shall be final and conclusive.

Proceedings not to decide Right or Title

VI. Provided always, and be it further enacted, That no Proceedings under the Provisions hereinbefore mentioned, shall extend or be construed to extend to decide any Right or Title as to the Property that shall be so registered, or as to the Persons who shall be entitled, or claim to be entitled, to the Benefit thereof, or any Interest therein.

Clerk of Peace to make Searches, and give Copies of Registers.

VII. And be it further enacted, That all and every Clerk of the Peace of the several Counties and Ridings in *England* and *Wales*, shall, as often as required, make Searches concerning all Memorials and Statements directed by this Act to be entered in his or their Office as aforesaid, and shall also give Copies of the same under his Hand, if required by any Person whatsoever, who shall tender or be willing to pay him the Sum or Sums hereinafter directed to be allowed to him for such Copies of such Memorials or Statements as aforesaid

Allowance to Clerk of the Peace;

and to Person inserting Notification in Gazette.

VIII. And be it further enacted, That every such Clerk of the Peace shall be allowed for the registering every such Memorial or Statement as is by this Act directed, the Sum of Four Shillings, and no more, in Case the same do not exceed Four Hundred Words, but if such Memorial or Statement shall exceed Four Hundred Words, then after the Rate and Proportion of One Shilling an Hundred for all the Words contained in such Entry, and the like Fees for the like Number of Words contained in every Copy of any Entry given out of the said Register, and no more; and for every Notification in the *London Gazette*, the Costs of such Notification, and the further Sum of Ten Shillings for drawing and inserting the same, and transmitting the Duplicate or Copy hereinbefore mentioned unto the Enrolment Office of the High Court of Chancery, and no more.

Further time allowed to register Memorial where Difficulties occur in preparing the same.

IX. And be it further enacted, That where any Difficulty shall occur in making and preparing such Memorial or Statement as aforesaid, so as to render it necessary to employ any longer time than is allowed by the Provisions of this Act for registering such Memorial or Statement as hereinbefore is mentioned, it shall and may be lawful for the Court of Quarter Sessions for the County, or City, or Town, being a County of itself, wherein such Memorial or Statement is intended to be registered, to allow, on Application made to them, and on Examination of the Circumstances, such further Time, not exceeding Six Calendar Months, as to such Court shall seem necessary to be given for the Purpose of duly registering such Memorial or Statement as hereinbefore is mentioned.

Costs attending preparing Memorials allowed.

X. And be it further enacted, That it shall and may be lawful for the Court of Quarter Sessions of the County, or City, or Town, being a County of itself, wherein such Statement or Memorial shall have been registered, to allow such reasonable Costs and Charges attending the preparing and registering, notifying and transmitting such Memorial or Statement, with Reference to the Income of the Charity or charitable Donation, to such Person or Persons causing the same to be registered, as such Court shall think fit; and it shall and may be lawful for such Person or Persons who shall have caused such Memorial or Statement to be registered, to deduct out of the Income, Funds, Rents, and Profits in his or their Hands of such Charity or charitable Donation so by him or them memorialized and stated and registered, the Sum and Sums so allowed, and no more: Provided

No. 15.
52 G. III. c. 102.

always, that the said Court of Quarter Sessions shall not allow any Sum whatever for and in Respect of such Costs and Charges, unless it shall be stated to them upon the Declaration in Writing of the Person or Persons applying for such Allowance, and signed by him or them, that such Memoral or Statement is to the best of his, her or their Knowledge and Belief true in every Respect, and that it doth contain, to the best of his, her or their Knowledge and Belief, a true and full Account of the Real and Personal Estate, annual gross Income, Investment, and the particular or general Objects of the Charity or charitable Donation of which such Memorial or Statement shall have been registered, together with the Names of the respective Donors or Benefactors thereto, where known, and also of the Person or Persons in whose Custody, Possession or Controul, the Deeds, Wills, and other Instruments hereinbefore mentioned, shall at such Time be, and also the Names of the Trustee or Trustees, Feoffee or Feoffees, Possessor or Possessors of such Real and Personal Estate: Provided always, that none of the Provisions hereinbefore contained shall be construed to extend to any Charity or charitable Donation not issuing out of or secured upon any Lands, Tenements or Hereditaments, or directed by the Founder or Donor thereof to be secured thereon, or to be permanently invested in Government or any Public Stocks or Funds, nor to any charitable Donation whatsoever, which by the Direction thereof, or by the lawful Rules of any charitable Institution whatsoever, may be wholly or in Part expended in and about the charitable Purposes for which the same may have been given, at the Discretion of the Governors, Directors, Managers, or the Trustee or Trustees of such charitable Institution at any Time whatsoever.

Not to extend to Donation not secured upon Lands, nor to Charitable Institutions.

XI. And be it further enacted, That nothing in this Act shall be construed to extend to any Hospital, School or other charitable Institution whatsoever, which shall have been founded, improved or regulated by or under the Authority of the King's most Excellent Majesty, or any of his Royal Predecessors, or of any special Act of Parliament thereunto particularly relating, nor to any charitable Donation under the Superintendence of any such Hospital, School or Institution, nor to the Governors of the Corporation of the Charity for the Relief of Poor Widows and Children of Clergymen, nor to any Friendly Society, the Rules whereof shall have been confirmed according to the Provisions of the Act or Acts for the Encouragement and Relief of Friendly Societies; nor to either of the Universities of *Oxford* or *Cambridge*, nor to any College or Hall thereto belonging, nor to any charitable Bequest, Devise, Gift or Foundation whatsoever belonging thereto, or under the Controul, Direction, Superintendence or Management of the said Universities or either of them, or any College or Hall therein respectively; nor to the *Radcliffe* Infirmary within the University of *Oxford*; nor to the Colleges of *Westminster*, *Eton*, or *Winchester*, or any of them; nor to any Cathedral or Collegiate Church within *England* and *Wales*; nor to the Charter House; nor to the Corporation of the Trinity House of *Deptford Strond*; nor to any Funds applicable to charitable Purposes for the Benefit of any Persons of the *Jewish* Nation.

Act not to extend to any Royal Foundations; nor to certain Institutions.

XII. Provided always, That nothing in this Act contained shall extend to any charitable Foundation or Donation which shall have been or shall be given to and for the Benefit of any Person or Persons of the Society of People called *Quakers*, and which shall be under the Superintendence and Controul of Persons of that Persuasion.

Nor to Charitable Institutions of Quakers.

XIII. Provided always, and be it further enacted, That nothing in this Act contained shall extend to any Charity or charitable Donation or Foundation, the Accounts of the Income and Expenditure whereof shall have been directed to be annually passed in the High

Nor to Charitable Foundations, Accounts of which are directed to be passed in Court of Chancery, &c.

No. 15. 52 G. III. c. 102. Court of Chancery, nor to any Charity or charitable Donation or Foundation, the annual gross Income whereof shall not exceed Forty Shillings, and of which the Trustee or Trustees, Feoffee or Feoffees, Possessor or Possessors, some or one of them, shall within Six Months after the passing of this Act deposit in the Hands of the Minister of the Parish wherein any of the Objects of such Charity, charitable Donation or Foundation shall be, a written Memorial or Statement in like Form as in the Schedule hereunto annexed is contained, and which by such Minister shall be forthwith deposited in the Parish Chest.

Divers Charities stated in Memorial.

XIV. And be it further enacted, That where any Body Corporate, Guild or Fraternity, shall be entrusted with the Possession or Distribution of divers Charities or charitable Donations or Foundations, or of the Rents and Profits thereof, that in such Cases all such Charities, charitable Donations and Foundations, may be registered and stated in one and the same Memorial.

General Saving.

XV. Saving always to the King's Most Excellent Majesty, and to all other Persons, such Power of superintending and regulating Charities and charitable Establishments, and the Property and Funds thereof, as they respectively had before the making of this Act.

SCHEDULE to which this Act refers.

A MEMORIAL or Statement in pursuance of an Act for the registering and securing of charitable Donations; whereby it is declared by the Undersigned [*state the Name or Names of the Person or Persons who sign the Memorial or Statement*] That the Real or Personal Estate [*state this as the Case may be*] of the [*state the Title, or Appellation of the Charity or charitable Donation*] consists of [*state this as the Case may be; and if Real Estate, whether it be in Lands, Tenements or Hereditaments, and of what Tenure, and where the same are situate, or whether of any Charge or Incumbrance on any Lands, Tenements or Hereditaments, and where situate: and if Personal Estate, describe the Nature of it, and how secured*] and the Gross Annual Income arising therefrom amounts to [*state the Sum*] and the Objects of which Charity or charitable Foundation are [*state the general or particular Objects of the Charity*] and which Charity or charitable Foundation was, according to the best of my [*or, our, as the Case may be*] Knowledge and Belief, founded by [*state by whom; and if benefited, increased or secured by any other Person, state the same and by whom*] and the Deeds, Wills and other Instruments [*state this as the Case may be; and if no Deeds, Wills, or other Instruments exist, state the same*] are, to the best of my [*or, our, as the Case may be*] Knowledge and Belief, in the Custody, Possession or Controul [*state this as the Case may be*] of [*state the Name of the Body Corporate or natural Person*] and the Trustees, Feoffees, or Possessors [*state this as the Case may be*] of the said Real and Personal Estate [*state this as the Case may be*] are, to the best of my [*or, our, as the Case may be*] Knowledge and Belief [*state the Name of the Body Corporate or natural Person, as the Case may be.*] (Signed) *A. B.*

C. D.

E. F.

Trustee or Trustees, Feoffees, Possessor or Possessors of the Real or Personal Estate [*as the Case may be*] of the Charity or Charitable Donation hereby memorialized and registered.

Part II. Class VI.

ACTS FOR CONVEYANCES BY INFANTS, LUNATICS, &c.

No. 1.

7 Anne, c. 19.—An Act to enable Infants who are seized or possessed of Estates in Fee, in Trust, or by Way of Mortgage, to make Conveyances of such Estates.

7 Ann., c. 19.

'WHEREAS many Inconveniences do and may arise by Reason 'that Persons under the Age of One and Twenty Years, hav-'ing Estates in Lands, Tenements, or Hereditaments, only in Trust 'for others, or by Way of Mortgage, cannot (though by the Direction 'of the *Cestuy que Trust*, or Mortgagor) convey any sure Estate in 'any such Lands, Tenements, or Hereditaments, to any other Person 'or Persons;' For Remedy thereof, be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the Tenth Day of *May* One Thousand Seven Hundred and Nine, it shall and may be lawful to and for any such Person or Persons, under the Age of One and Twenty Years, by the Direction of the High Court of *Chancery* or the Court of *Exchequer*, signified by an Order made upon hearing all Parties concerned, on the Petition of the Person or Persons for whom such Infant or Infants shall be seized or possessed in Trust, or of the Mortgagor or Mortgagors, or Guardian or Guardians of such Infant or Infants, or Person or Persons entitled to the Monies secured by or upon any Lands, Tenements, or Hereditaments, whereof any Infant or Infants are or shall be seized or possessed by Way of Mortgage, or of the Person or Persons entitled to the Redemption thereof, to convey and assure any such Lands, Tenements, or Hereditaments, in such Manner as the said Court of *Chancery* or the Court of *Exchequer* shall, by such Order so to be obtained, direct, to any other Person or Persons; and such Conveyance or Assurance so to be had and made as aforesaid, shall be as good and effectual in Law, to all Intents and Purposes whatsoever, as if the said Infants or Infant were, at the Time of making such Conveyance or Assurance, of the full Age of One and Twenty Years; any Law, Custom, or Usage to the contrary in any wise notwithstanding.

After 10 May, 1709, any Person under the Age of 21, being Trustees, &c. may by the Directions of the Courts of Chancery, or Exchequer, convey the Lands, &c. and such Conveyance shall be good.

II. And be it further enacted by the Authority aforesaid, That all and every such Infant or Infants, being only Trustee or Trustees, Mortgagee or Mortgagees as aforesaid, shall and may be compelled by such Order, so as aforesaid to be obtained, to make such Conveyance

An Infant being Trustee, &c. may be compelled to make such Conveyance, &c.

No. 1. 7 Anne c. 19

or Conveyances, Assurance or Assurances as aforesaid, in like Manner as Trustees or Mortgagees of full Age are compellable to convey or assign their Trust Estates, or Mortgages. (1)

(1) As to the Effect of Conveyances by Infant Trustees or Mortgagees, independently of this Statute, see Zouch v. Parsons, 3 Bur. 1794. ——— v. Handcock, 17 Vesey, 384. The Statute extends only to Trusts expressly declared, and not to Trusts by Implication of Law. Goodwyn v. Lyster, 3 P. Wms. 387. not to a Devise to an Infant subject to a Charge for Payment of Debts. Anon. note, ibid. The Infant must be a dry Trustee, having no Interest in the Subject, ——— v. Handcock. But the being a Co-executor and Co-residuary Legatee, is not such an Interest as prevents the Operation of the Statute, S. C. and a Purchaser is compelled to take the Title. The Infant may be ordered to levy a Fine, exparte Maire, 3 Atk. 479; or suffer a Recovery, exparte Smith, Ambl. 624, exparte Johnson, 3 Atk. 559. The Act extends to Estates in Calcutta, Barbadoes, &c. exparte Anderson, 5 Vesey, 248, and Cases there cited. The Order is never made upon Petition, except where the Party has the absolute Right. An Infant Trustee is never ordered to convey to another Trustee upon Trusts to be executed. That must be by a Bill praying to have a new Trustee appointed and a Conveyance executed. S. C.—A Motion to commit the Mother for not permitting the Infant to convey, not a proper Mode of taking the Opinion of the Court, exparte Cant. 10 Vesey, 554; necessary Costs allowed, S. C.

It would often be attended with very great Convenience if Courts of Equity were enabled by the Act of a proper Officer to transfer legal Estates vested in Persons abroad or not ascertained.—Such a Provision is made with Respect to Property in the Funds, by Stat. 36 Geo. III. c. 90. post Part III Class and with Respect to Lands, by the Irish Statute, 23 Geo. III. c. 35. See 2 Gabb. 358.

No. 2.

4 George II. c. 10.—An Act to enable Ideots and Lunaticks, who are seised or possessed of Estates in Fee, or for Lives, or Terms of Years, in Trust, or by Way of Mortgage, to make Conveyances, Surrenders or Assignments of such Estates.

4 Geo. II. c. 10

Ideots or Lunatics seised of Estates in Trust, &c. may make Conveyances, &c. of such Estates.

'WHEREAS many Inconveniencies do and may arise, by Reason 'that Persons being Ideot, Lunatick, or *Non compos mentis*, 'having Estates in Lands, Tenements or Hereditaments, in Trust only 'for others, or by Way of Mortgage, cannot (though by the Direction 'of the *Cestuique Trust*, or Mortgagor) convey any sure Estate in any 'such Lands, Tenements or Hereditaments, to any other Person or 'Persons:' For Remedy thereof, Be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the Twenty-fourth Day of *June* One Thousand Seven Hundred and Thirty-one, it shall and may be lawful to and for any such Person or Persons, being Ideot, Lunatick or *Non compos mentis*, or for the Committee or Committees of such Person or Persons, in his, her, or their Name or Names, by the Direction of the Lord Chancellor of *Great Britain*, or the Lord Keeper or Commissioners of the Great Seal of *Great Britain* for the Time being, signified by an Order made, upon hearing all Parties concerned, on the Petition of the Person or Persons, for whom such Person or Persons being Ideot, Lunatick or *Non compos mentis*, shall be seised or possessed in Trust, or of the

Mortgagor or Mortgagors, or of the Person or Persons intitled to the Monies secured by or upon any Lands, Tenements or Hereditaments, whereof any such Person or Persons being Ideot, Lunatick, or *Non compos mentis*, is or are or shall be seised or possessed by Way of Mortgage, or of the Person or Persons intitled to the Redemption thereof, to convey and assure any such Lands, Tenements or Hereditaments, in such Manner as the Lord Chancellor of *Great Britain*, or Lord Keeper or Commissioners of the Great Seal of *Great Britain*, shall by such Order so to be obtained direct, to any other Person or Persons; and such Conveyance or Assurance, so to be had and made as aforesaid, shall be as good and effectual in Law, to all Intents and Purposes whatsoever, as if the said Person or Persons being Ideot, Lunatick or *Non compos mentis*, was or were, at the Time of the making such Conveyance or Assurance, of sane Mind, Memory and Understanding, and not Ideot, Lunatick or *Non compos mentis*, or had by him, her, or themselves executed the same; any Law, Custom or Usage to the contrary in any wise notwithstanding. No. 2. 4 Geo. II. c. 10.

II. And be it further enacted by the Authority aforesaid, That all and every such Person and Persons being Ideot, Lunatick, or *Non compos mentis*, and only Trustee or Trustees, Mortgagee or Mortgagees as aforesaid, or the Committee or Committees of all and every such Person and Persons, being Ideot, Lunatick, or *Non compos mentis*, and only such Trustee or Mortgagee as aforesaid, shall and may be impowered and compelled, by such Order so as aforesaid to be obtained, to make such Conveyance or Conveyances, Assurance or Assurances as aforesaid, in like Manner as Trustees or Mortgagees of sane Memory are compellable to convey, surrender or assign their Trust Estates or Mortgagees. (1) Ideots, &c. or their Committees, may be compelled by Order, to make Conveyances, &c.

(1) A Trustee found lunatic by the Master's Report cannot be ordered to convey under this Statute, unless a Commission has issued.—Ex parte Gillam, 2 Vesey, jun. 567. Where a Commission has issued, the Court will order the Lunatic and his Curator to join in the Conveyance.—Ex parte Lady Arrundale, Ambler, 80. So where the Heir of a Mortgagee was found lunatic by the Senate of Hamburgh.—Ex parte Lewis, 1 Vesey. 298. A Commission of Lunacy not necessary under Statute 36 Geo. III. c. 90,—[respecting Money in the Funds,]—Simons v. Naylor, 4 Vesey, 360.

No. 3.

29 George II. c. 31.—An Act to enable Infants, Lunaticks, and Femes Covert, to surrender Leases in order to renew the same.

'WHEREAS divers Lands, Tenements and Hereditaments have been, and may be, granted by Lease for the Life of one or more Person or Persons, or for Terms of Years absolute, or determinable upon the Death of one or more Person or Persons or otherwise: And whereas in order to obtain a Renewal of such Leases, it is in many Cases necessary to surrender up the Estates thereby granted; which Surrenders cannot be effectually made by Persons under the Age of Twenty-one Years, nor Lunaticks, nor by Femes Covert without levying a Fine, to the manifest Detriment of them and their Families;' Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament 29 Geo. II. c. 31.

No. 3.
29 Geo. II. c. 31.

Guardians, &c. of Minors, &c in order to the Surrender and Renewal of Leases, may apply to the Court of Chancery, &c and by Order, may surrender by Deed such Leases, and renew same, &c.

assembled, and by the Authority of the same, That in all Cases where any Person under the Age of Twenty-one Years, or any Lunatick or Feme Covert, is or shall become interested in or intitled to any Lease or Leases made or granted, or to be made or granted, by any Person or Persons, Bodies Politick, Corporate or Collegiate, Aggregate or Sole, for the Life or Lives of one or more Person or Persons, or for any Term of Years, either absolute or determinable upon the Death of one or more Person or Persons or otherwise, it shall and may be lawful for such Person under the Age of Twenty-one Years, or for his or her Guardian or Guardians, or other Person or Persons on his or her Behalf, and for such Lunatick, or his or her Guardian or Guardians, Committee or Committees of the Estate, or other Person or Persons on his or her Behalf, and for such Feme Covert, or any other Person or Persons on her Behalf, to apply to the high Court of *Chancery* of *Great Britain*, the Court of *Exchequer*, the Courts of Equity of the Counties Palatine of *Chester*, *Lancaster*, and *Durham*, or the Courts of Great Session of the Principality of *Wales* respectively, by Petition or Motion, in a summary Way, and by the Order and Direction of the said Courts respectively made, upon hearing all Parties concerned, such Person under the Age of Twenty-one Years, and such Lunatick, or Person or Persons appointed by the said Courts respectively, and also such Feme Covert, by Deed or Deeds only, without levying any Fine, shall and may be enabled, from Time to Time, to surrender such Lease or Leases, and accept and take, in the Name, and for the Benefit of such Person under the Age of Twenty-one Years, or Lunatick, or Feme Covert, one or more new Lease or Leases of the Premises comprised in such Lease or Leases surrendered by Virtue of this Act, for and during such Number of Lives, or for such Term or Terms of Years, determinable upon such Number of Lives, or for such Term or Terms of Years absolute, as was or were mentioned or contained in such Lease or Leases so surrendered, at the making thereof respectively, or otherwise as the said Courts shall respectively direct.

Charges attending Renewal, to be charged on the Estate, &c Court shall direct.

II. And be it further enacted by the Authority aforesaid, That all and every Sum and Sums of Money, and other Consideration, paid or advanced by any such Guardian, Trustee, Committee or other Person, as and for a Fine or Income, or in the Nature of a Fine or Income, for or on Account of the Renewal of any such Lease or Leases, and all reasonable Charges incident thereto, shall be paid out of the Estate or Effects of the Infant or Lunatick for whose Benefit the said Lease or Leases shall be renewed, or shall be a Charge and Incumbrance upon the Leasehold Premisses, together with Interest for the same, as the said Courts respectively shall direct and determine; and as for and concerning Leases to be made upon Surrenders by Femes Covert, unless the Fine or Consideration of such Lease, and the reasonable Charges shall be otherwise paid or secured, the same, together with Interest, shall be a Charge or Incumbrance upon such Leasehold Premisses, for the Use and Benefit of such Person or Persons who shall advance the same.

New Leases to be to same Uses.

III. And be it further enacted by the Authority aforesaid, That the respective Leases to be so renewed shall operate, and be to the same Uses, and be liable to the same Trusts, Charges, Incumbrances, Dispositions, Devises and Conditions, as the Leases to be, from Time to Time, surrendered as aforesaid, were or would have been subject to, in case such Surrender had not been made; any Thing in this or any former Law to the contrary notwithstanding.

Surrender and Renewal deemed valid.

IV. And be it further enacted and declared, That every such Surrender, and such Lease or Leases granted thereupon, shall be, and be deemed as valid and legal, to all Intents and Purposes, as if such

Surrender had been made by and on the Behalf of a Person of full Age, sane Mind, or not married; any Thing in this or any former Law to the contrary notwithstanding. No. 3. 29 Geo. II. c. 31.

No. 4.

4 George III. c. 16.—An Act to enable Infants who are seised of Lands, Tenements, or Hereditaments, within the Duchy of *Lancaster*, or the Counties of *Chester*, *Lancaster*, or *Durham*, or the Principality of *Wales*, in Fee, or for the Life or Lives of one or more other Person or Persons, in Trust, or by Way of Mortgage, to make Conveyances of such Estates by Order of the Court of the Duchy Chamber of *Lancaster*, of the Court of *Exchequer* of the County Palatine of *Chester*, the Court of *Chancery* of the County Palatine of *Lancaster*, of the Court of *Chancery* of the County Palatine of *Durham*, and of the Courts of the Great Sessions in the Principality of *Wales*.

4 G. III. c. 16.

Act 7 Anne, c. 19.

'WHEREAS by an Act of Parliament made in the seventh Year of the Reign of her late Majesty Queen Anne, intituled, *An Act to enable Infants who are seised or possessed of Estates in Fee, in Trust, or by Way of Mortgage, to make Conveyances of such Estates*, Persons under the Age of one and twenty Years, having Estates in Lands, Tenements, or Hereditaments, only in Trust for others, or by Way of Mortgage, are enabled and compellable, by the Direction and Order of the High Court of *Chancery*, or the Court of *Exchequer*, to convey and assure such Lands, Tenements, or Hereditaments, in such Manner as the said Court of *Chancery*, or the Court of *Exchequer*, shall, by such Order in pursuance of the said Act, direct: And whereas the Benefit intended by the said Act will be manifestly extended, by giving to, and vesting in, the proper respective Courts of the Duchy of *Lancaster*, and the Courts in the several Counties Palatine of *Chester*, *Lancaster*, and *Durham*, and the Courts of the Great Sessions in *Wales*, such and the like Power, Jurisdiction and Authority, respecting Infants who are or shall be seised of Lands, Tenements, or Hereditaments, within the said Duchy of *Lancaster*, and the several Counties Palatine of *Chester*, *Lancaster*, and *Durham*, and the Principality of *Wales* respectively, in Fee, or for the Life or Lives of one or more other Person or Persons, as by the said Act is given to, and vested in, the High Court of *Chancery*, and the Court of *Exchequer*:' Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the first Day of *June*, One Thousand Seven Hundred and Sixty-four, it shall and may be lawful to and for any Person or Persons under the Age of One and Twenty Years, having such Estate or Estates in Lands, Tenements, or Hereditaments, within the Duchy of *Lancaster*, or the Counties Palatine of *Chester*, *Lancaster*, and *Durham* respectively, or in the Principality of *Wales*, by the Direction of the Court of the Duchy Chamber of *Lancaster*, of the Court of *Exchequer* of the

Infants may, by Order of the Court, make Conveyances of such Estates;

No. 4.
4 G. III. c. 16.

County Palatine of *Chester*, of the Court of *Chancery* of the County Palatine of *Lancaster*, of the Court of *Chancery* of the County Palatine of *Durham*, and of the several Courts of the Great Sessions in *Wales* respectively, signified by an Order made upon hearing all Parties concerned on the Petition or Motion of the Person or Persons for whom such Infant or Infants, shall be so seised as aforesaid, in Trust, or of the Mortgagor or Mortgagors, or Guardian or Guardians, of such Infant or Infants, or Persons intitled to the Monies secured by or upon any such Lands, Tenements, or Hereditaments, whereof any Infant or Infants are or shall be seised, in Trust, or by Way of Mortgage, or of the Person or Persons intitled to the Redemption thereof, to convey and assure any such Lands, Tenements, or Hereditaments, in such Manner as the said several Courts of the said Duchy, Counties Palatine, and Great Session in *Wales*, wherein such Lands, Tenements, or Hereditaments, shall lie, by such Order so to be obtained, direct, to any other Person or Persons; and such Conveyance or Assurance so to be had and made as aforesaid, shall be as good and effectual in Law, to all Intents and Purposes whatsoever, as if the said Infant or Infants was or were at the making such Conveyance or Assurance of the full Age of One and Twenty Years; any Law, Custom, or Usage, to the contrary in any wise notwithstanding.

Being only Trustees, or Mortgagees, may be compelled by such Order, to make such Conveyances and Assurances accordingly.

II. And be it further enacted by the Authority aforesaid, That all and every such Infant or Infants, being only Trustee or Trustees, Mortgagee or Mortgagees, as aforesaid, shall and may be compelled, by such Order as aforesaid to be obtained, to make such Conveyance or Conveyances, Assurance or Assurances, as aforesaid, in like Manner as Trustees or Mortgagees of full Age are compellable to convey or assign their Trust Estates or Mortgages.

No. 5.

11 George III. c. 20.—An Act to enable Lunatics intitled to renew Leases, their Guardians and Committee, to accept of Surrenders of Old Leases, and grant new ones.

11 G. III. c. 20.

'WHEREAS by the Laws now in Force, Lunatics, or their Guardians or Committees, have not any Power or Authority, upon a Surrender of any Lease of Lands, Tenements, or Hereditaments, for the Life or Lives of one or more Person or Persons, or for Terms of Years absolute or determinable on the Death of one or more Person or Persons, to make a sure or effectual Renewal of such Lease or Leases, which is frequently to the Detriment of such Lunatics and their Families, and always to the Prejudice of the Person or Persons intitled to such Renewal:' Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the Twenty-fifth Day of *March*, One Thousand Seven Hundred and Seventy-one, in all Cases where any Lunatic is or shall be intitled, or has Right to renew any Lease or Leases made or granted, or to be made or granted, for the Life or Lives of one or more Person or Persons, or for any Term or Number of Years, absolute or determinable on the Death of one or more Person or Persons, or otherwise, it shall and may be lawful to and for such Lunatic, or his

Lunatics, their Guardians, &c.

No. 5.
11 G. III. c. 20.

or her Guardian or Guardians, Committee or Committees, of his Estate, in his, her, or their Name or Names, by the Direction of the Lord High Chancellor of *Great Britain*, or the Lord Keeper or Lords Commissioners of the Great Seal of *Great Britain* for the Time being, signified by an Order made on hearing all Parties concerned, upon Petition, in a summary Way, from Time to Time, to accept of a Surrender or Surrenders of such Lease or Leases; and to make and execute to any Person or Persons, Bodies Politic, or Corporate or Collegiate, Aggregate or Sole, a new Lease or Leases of the Premises comprised in such Lease or Leases so to be surrendered by Virtue of this Act, for and during such Number of Lives, or for such Term or Terms of Years, determinable upon such Number of Lives, or for such Term or Terms of Years, determinable upon such Number of Lives, or for such Term or Terms of Years absolute, as was or were mentioned or contained in such Lease or Leases so surrendered, at the making thereof, or otherwise, as the Lord High Chancellor of *Great Britain*, or the Lord Keeper or Lords Commissioners of the Great Seal of *Great Britain* for the Time being, by any such Order, so to be obtained as aforesaid, shall direct.

may accept of Surrenders, and make new Leases.

II. And be it further enacted and declared by the Authority aforesaid, That all and every such Lease or Leases so to be made or executed as aforesaid, shall be and be deemed as good and valid, and effectual in the Law, to all Intents and Purposes, as if such Lunatic was at the Time of making or executing thereof of sane Mind, and had executed the same in his or her own proper Person; any Thing in this Act, or any former Law, to the contrary thereof in any wise notwithstanding.

Leases valid and effectual.

III. Provided always, and be it further enacted by the Authority aforesaid, That all Fines, Premiums, Foregifts, and Sums of Money, which shall or may be had, received, or paid for, or on Account of the Renewing of any such Lease or Leases as aforesaid, shall (after a Deduction of all necessary incident Charges and Expences) be paid to the Guardian or Guardians, Committee or Committees, of the said Lunatic, and be applied and disposed of for the Benefit of such Lunatic, in such Manner as the Lord High Chancellor of *Great Britain*, or the Lord Keeper or Lords Commissioners of the Great Seal of *Great Britain*, shall direct: But, upon the Death of such Lunatic or Lunatics, all such Sum and Sums of Money as shall arise by such Fines, Premiums, or Foregifts, or so much as shall remain unapplied for the Benefit of such Lunatic or Lunatics, at his, her, or their Death, shall, as between the Representatives of the Real and Personal Estates of all such Lunatics, be considered as Real Estate, unless such Lunatic or Lunatics shall be Tenant for Life only; and then the same shall be considered as personal Estate.

Premiums to go to the Guardians of Lunatics.

On Death of Lunatics, Money arising by such Fines to be considered real Estate, unless, &c.

No. 6.

43 George III. c. 75.—An Act to authorize the Sale or Mortgage of the Estates of Persons found lunatick by Inquisition, in *England* or *Ireland* respectively; and the granting of Leases of the same [4th *July*, 1803.]

43 G. III. c. 75.

'WHEREAS great Injury frequently happens to Persons found 'lunatick or of unsound Mind, and incapable of managing 'their Affairs, by Inquisitions taken in *England* and *Ireland* respect- 'ively, and the Creditors of such Persons are delayed in obtaining 'Payment of their Demands, for Want of sufficient Power to apply

No 6.
43 G III c 75.

'the Property of such Persons in Discharge of their Debts and Engagements: And whereas the Care and Commitment of the Custody of the Persons and Estates of Persons so found lunatick or of unsound Mind, have been usually entrusted, by Virtue of the King's Sign Manuel, to the Lord Chancellor, Lord Keeper, or Lords Commissioners for the Custody of the Great Seal of the United Kingdom and of *Ireland* respectively, and it would be Beneficial to such Persons and their Creditors if Power were given to dispose of their Property, for Payment of their Debts, and Performance of their Engagements, under the Controul of such Chancellor, Keeper, and Commissioners in *England* and *Ireland* respectively;' be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall and may be lawful for the Lord Chancellor, Lord Keeper, or Lords Commissioners for the Custody of the Great Seal of the United Kingdom and of *Ireland* respectively, being entrusted by Virtue of the King's Sign Manual, with the Care and Commitment of the Custody of the Persons and Estates of Persons found lunatick or of unsound Mind, and incapable of managing their Affairs, by Inquisition taken in *England* and *Ireland* respectively, to order the Freehold and Leasehold Estate of such Persons respectively to be sold, or charged and incumbered by Way of Mortgage or otherwise, as shall be deemed most expedient for the Purpose of raising such Sum or Sums of Money as shall be necessary for Payment of the Debts, and for performing the Contracts or Engagements of any such Persons respectively, and the Costs and Charges attending the same, and attending such Sale, Mortgage, or Incumbrance respectively, and to direct the Committee or Committees of the Estate of such Persons respectively to execute in the Name and on Behalf of such Persons respectively Conveyances of the Estates so to be sold, mortgaged, or incumbered, and to procure such Admittance to and make such Surrenders of the Copyhold Estates of such Persons found lunatick or of unsound Mind, and to do all such Acts as shall be necessary to effectuate the same, in such Manner as such Chancellor, Keeper, or Commissioners of the Great Seal of the United Kingdom and of *Ireland* respectively shall direct; which Conveyances so to be made in pursuance of any such Order aforesaid, shall be as good and effectual in Law as if the same had been executed by every such Person so found lunatick or of unsound Mind respectively, when in his or her sound Mind.

The Lord Chancellor of the United Kingdom and of Ireland being entrusted with the Persons & Estates of Lunaticks, may order the Freehold and Leasehold Estate of such Persons to be sold or charged by Mortgage, for raising Money for the Payment of Debts, &c.

II. And be it further enacted, That in Case there shall be any Surplus of Money to be raised by any such Sale as aforesaid, after answering the Purposes aforesaid, the same shall be applied and disposed of in the same Manner as the Estate sold would have been applied if this Act had not been made.

Application of Surplus.

III. 'And whereas many Persons so found lunatick, or of unsound Mind, may be seised and possessed of Freehold and Copyhold Lands, Tenements, and Hereditaments, either for the Term of their natural Lives, or for some other Estate, with Power of granting Leases and taking Fines, reserving small Rents on such Leases for one, two, or three Lives, in Possession or Reversion, or for some Number of Years determinable upon Lives, or for Terms of Years absolutely;' be it enacted, That in every such Case all and every Power of leasing such Lands, Tenements, and Hereditaments, which is or shall be vested in such Person so found lunatick or of unsound Mind, having a limited Estate only, shall and may be executed by the Committee or Committees of the Estate of such Person, under the Direction and Order of the Lord Chancellor, Lord

The Power of leasing Lands, &c of Lunaticks having only a limited Estate therein, may be executed by the Committee of the Estate of such Person under the Direction of the Chancellor.

No. 6.
43 G. III. c. 75.

Keeper, or Lords Commissioners for the Custody of the Great Seal of the United Kingdom and of *Ireland* respectively, being duly entrusted, by Virtue of the King's Sign Manual, with the Care and Commitment of the Custody of the Persons and Estates of such Persons; and such Lease or Leases so to be executed by the said Committee and Committees, under and by Virtue of such Order, shall be as good and effectual in Law as if the same were executed by the said Person so found lunatick or of unsound Mind, in his or her sound Mind.

Where Lunaticks are seised of Freehold or Copyhold Estates in Fee or in Tail, and an absolute Interest in Leasehold Estates, the Chancellor may direct the Committee of the Estate to make Leases thereof.

IV. 'And whereas Persons so found lunatick or of unsound 'Mind may be seised or possessed of, and entitled to, Freehold or 'Copyhold Estates in Fee or in Tail, and an absolute Interest in 'Leasehold Estates, and it may be for the Benefit of such Persons 'that Leases or Under-Leases should be made of such Estates for 'Terms of Years, and especially to encourage the Erection of Buildings thereon, or repairing Buildings actually being thereon, or 'otherwise improving the same; be it enacted, That it shall and may be lawful for the Lord Chancellor, Lord Keeper, or Lords Commissioners for the Custody of the Great Seal of the United Kingdom and of *Ireland* respectively, intrusted by Virtue of the King's Sign Manual with the Care and Commitment of the Custody of the Persons and Estates of such Persons respectively, to order and direct a Committee or Committees of the Estate of such Lunatick, to make such Leases of the Freehold, Copyhold, or Leasehold Estates of such Persons respectively, according to his or her Interest therein respectively, and to the Nature of the Tenures of such Estates respectively, for such Term or Terms of Years, and subject to such Rents and Covenants, as the Lord Chancellor, Lord Keeper, or Lords Commissioners for the Custody of the Great Seal of the United Kingdom and of *Ireland* respectively, intrusted as aforesaid, shall direct; and that all and every such Lease or Leases made by such Committee or Committees, under and by Virtue of the said Order, as such Lord Chancellor, Lord Keeper, or Lords Commissioners respectively shall make thereupon, shall be as good and valid in the Law as if the same had been executed by the Persons so found lunatick or of unsound Mind respectively, in his or her sound Mind.

Acts of Committees under this Act shall be binding.

V. And be it further enacted, That all and every Act to be done by such Committee or Committees of the Estate of such Lunatick, under and by Virtue of this Act, and the Order of the Lord Chancellor, Lord Keeper, or Lords Commissioners of the Great Seal of the United Kingdom and of *Ireland* respectively, intrusted as aforesaid, shall be as valid and binding against the said Persons so found lunatick and of unsound Mind respectively, and all Persons claiming by, through, or under him or her respectively, as if the Persons so found lunatick or of unsound Mind respectively, had been in his or her sound Mind, and had personally done such Act or Acts respectively.

Act shall not subject Estates of Lunaticks to Debts otherwise than they are now subject by Law, but shall be applied only for the Benefit of Lunaticks.

VI. Provided nevertheless, and be it enacted, That Nothing in this Act contained shall extend, or be construed to extend, to subject any Part of the Freehold, Copyhold, or Leasehold Estates of any Person found lunatick or of unsound Mind, to the Debts or Demands of his Creditors, otherwise than as the same are now subject or liable, by due Course of Law; but only to authorize the Lord Chancellor, Lord Keeper, or Lords Commissioners for the Custody of the Great Seal of the United Kingdom and of *Ireland* respectively, being intrusted by Virtue of the King's Sign Manual, with the Care and Commitment of the Custody of the Persons and Estates of Persons so found lunatick or of unsound Mind, to make Order in such Cases as are hereinbefore mentioned, when the same shall be deemed for the Benefit and Advantage of such Person so found lunatick or of unsound Mind, and incapable of managing his or her Affairs.

PART II. CLASS VII.

FRAUDULENT CONVEYANCES. *

No. 1.

50 Edward III. c. 6.—Fraudulent Assurances of Lands or Goods, to deceive Creditors, shall be void.

50 Edw III. c. 6.
Rast 197.
Dyer, 295
Fitz Execution, 58, 108

"ITEM, Because that divers "People inherit of divers Te- "nements, borrowing divers Goods "in Money or in Merchandize of "divers People of this Realm, do "give their Tenements and Chat- "tels to their Friends, by Collu- "sion thereof to have the Profits "at their Will, and after do flee "to the Franchise of *Westminster*, "of St. *Martin le Grand* of *Lon- "don*, or other such privileged "Places, and there do live a great "Time with an high Counte- "nance of another Man's Goods "and Profits of the said Tene- "ments and Chattels, till the said "Creditors shall be bound to take "a small Parcel of their Debt, "and release the Remnant;" 'it 'is ordained and assented, That if 'it be found that such Gifts be so 'made by Collusion, that the said 'Creditors shall have Execution 'of the said Tenements and Chat- 'tels, as if no such Gift had been 'made.'

Enforced by 2 R. 2, st 2, c 3. 3 H 7, c. 4 13 El. c 5. which make fraudulent Deeds void

ITEM pur ceo qe diverses gentz inheritez des diverses tenementz creantceantz diverses biens en monoie ou en marchandise des pluseurs gentz de Roialme donnont lour tenementz & chateux a lour amys par collusion davoir ent les profitz a leur volente & puis senfuent a la franchise de Westm' ou Seint Martyn le Grant en Loundres ou autres tielx places privilegeez & illoeqes vivent long temps a grant countenance dautry biens & des profitz des ditz terres & chateux tanqe les ditz creditours serront molt leez de prender une petite parcelle de lour dettes & relesser le remanant ordeigne est & assentuz qe si purra estre trovez qe tielx douns soient issint faitz par collusion qe les ditz creditours eient execution des ditz tenementz & chateux auxi avant come nul tiel doun neust euste este faite.

No. 2.

O R
21 Ja. 1, c 20.
Dyer, 295
50 Ed. 3, c. 6

2 Richard II. Stat. 2, c. 3.—Fraudulent Deeds made by Debtors to avoid their Creditors, shall be void.

[The Statute relates to Persons taking Sanctuary in Places privileged by the Church]

* See Note at the End of the Class.

No. 3.

3 Henry VII. c. 4.—All Deeds of Gift made to defraud Creditors shall be void.

3 H VIII. c. 4.

50 Ed. 3, c. 6.
2 R. 2, stat. 2, c. 3.

ITEM, That where oftentimes Deeds of Gift of Goods and Chattels have been made, to the Intent to defraud their Creditors of 'their Duties, and that the Person or Persons that maketh the said 'Deed of Gift goeth to Sanctuary, or other Places privileged, and 'occupieth and liveth with the said Goods and Chattels, their Creditors being unpaid:' It is ordained, enacted, and established by the Assent of the Lords Spiritual and Temporal, and at the Request of the Commons in the said Parliament assembled, and by Authority of the same, That all Deeds of Gift of Goods and Chattles made or to be made of Trust, to the Use of that Person or Persons that made the same Deed of Gift, be void and of none Effect.

No. 4.

13 Elizabeth, c. 5.—An Act against fraudulent Deeds, Alienations, &c.

13 Eliz c. 5.
3 H. 7, c. 4.

Fraudulent Deeds made to avoid the Debts of others shall be void, and the Penalties of the Parties to such fraudulent Assurances

2 Bulstr. 218.

'FOR the Avoiding and Abolishing of feigned, covinous and fraudulent Feoffments, Gifts, Grants, Alienations, Conveyances, 'Bonds, Suits, Judgments and Executions, as well of Lands and 'Tenements as of Goods and Chattels, more commonly used and 'practised in these Days than hath been seen or heard of heretofore: 'Which Feoffments, Gifts, Grants, Alienations, Conveyances, Bonds, 'Suits, Judgments and Executions, have been and are devised and 'contrived of Malice, Fraud, Covin, Collusion or Guile, (1) to the 'End, Purpose and Intent, to delay, hinder or defraud Creditors and 'others of their just and lawful Actions, Suits, Debts, Accounts, 'Damages, Penalties, Forfeitures, Heriots, Mortuaries and Reliefs, 'not only to the Let or Hindrance of the due Course and Execution 'of Law and Justice, but also to the Overthrow of all true and plain 'Dealing, Bargaining and Chevisance between Man and Man, without 'the which no Commonwealth or civil Society can be maintained or 'continued:'

All fraudulent conveyances made to avoid the Debt or Duty of others shall be void

Rast. 207.
27 El. c. 4.
2 Leon. 9, 223.
2 Roll 493.
Latch. 222.
Dyer, 295, 350.
3 Coke, 80
5 Co. 60 8 Co. 171 9 Co. 108.
Co. Lit 76, a.
1 Leon 47, 308
Hob 72.
Cro. El. 810.
Bac V. 2- 601.
Vin. V. 13--533.
10 Co. 56.

II. Be it therefore declared, ordained and enacted by the Authority of this present Parliament, That all and every Feoffment, Gift, Grant, Alienation, Bargain and Conveyance of Lands, Tenements, Hereditaments, Goods and Chattels, or of any of them, or of any Lease, Rent, Common or other Profit or Charge out of the same Lands, Tenements, Hereditaments, Goods and Chattels, or any of them, by Writing or otherwise, and all and every Bond, Suit, Judgment and Execution, at any Time had or made sithence the Begining of the Queen's Majesty's Reign that now is, or at any Time hereafter to be had or made, to or for any Intent or Purpose before declared and expressed, shall be from henceforth deemed and taken (only as against that Person or Persons, his or their Heirs, Successors, Executors, Ad-

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(1) The Confessing Judgment to a particular Creditor for a large Sum beyond his Debt, with a Defeasance that Execution should only issue for the Amount of the Debts due to all the Creditors, to whom a rateable Distribution should be made, is not fraudulent within the Statute, although it may have the Effect of depriving a particular Creditor of Part of his Debt.—Meux v. Howell, 4 E. 1.

No. 4.
13 Eliz. c. 5

ministrators and Assigns, and every of them, whose Actions, Suits, Debts, Accounts, Damages, Penalties, Forfeitures, Heriots, Mortuaries and Reliefs, by such guileful, covinous or fraudulent Devices and Practices, as is aforesaid, are, shall or might be in any Wise disturbed, hindred, delayed or defrauded) to be clearly and utterly void, frustrate and of none Effect; any Pretence, Colour, feigned Consideration, expressing of Use, or any other Matter or Thing to the contrary notwithstanding.

The Forfeiture of the Parties to fraudulent Deeds. Coke, pla. 162. Hob. 166. Dyer, 351. Cro. El. 645. Cro. Jac. 270.

III. And be it further enacted by the Authority aforesaid, That all and every the Parties to such feigned, covinous or fraudulent Feoffment, Gift, Grant, Alienation, Bargain, Conveyance, Bonds, Suits, Judgments, Executions and other Things before expressed, and being privy and knowing of the same, or any of them, which at any Time after the tenth Day of *June* next coming shall wittingly and willingly put in Ure, avow, maintain, justify or defend the same, or any of them, as true, simple, and done, had or made *bona fide* and upon good Consideration; or shall alien or assign any the Lands, Tenements, Goods, Leases or other Things before mentioned, to him or them conveyed as is aforesaid, or any Part thereof; shall incur the Penalty and Forfeiture of one Year's Value of the said Lands, Tenements and Hereditaments, Leases, Rents, Commons or other Profits, of or out of the same; and the whole Value of the said Goods and Chattels; and also so much Money as are or shall be contained in any such covinous and feigned Bond; (2) the one Moiety whereof to be to the Queen's Majesty, her Heirs and Successors, and the other Moiety to the Party or Parties grieved by such feigned and fraudulent Feoffment, Gift, Grant, Alienation, Bargain, Conveyance, Bonds, Suits, Judgments, Executions, Leases, Rents, Commons, Profits, Charges and other Things aforesaid, to be recovered in any of the Queen's Courts of Record by Action of Debt, Bill, Plaint or Information, wherein no Essoin, Protection or Wager of Law shall be admitted for the Defendant or Defendants; and also being thereof convicted, shall suffer Imprisonment for one Half Year without Bail or Mainprise.

Who shall have the Forfeiture and by what Means.

Common Recoveries against Tenants of Freehold.

IV. Provided always, and be it further enacted by the Authority aforesaid, That whereas sundry common Recoveries of Lands, Tenements and Hereditaments have heretofore been had, and hereafter may be had against Tenant in Tail, or other Tenant of the Freehold, the Reversion or Remainder, or the Right of Reversion or Remainder, then being in any other Person or Persons; that every such common Recovery heretofore had, and hereafter to be had, of any Lands, Tenements or Hereditaments, shall as touching such Person and Persons which then had any Remainder or Reversion, or Right of Remainder or Reversion, and against the Heirs of every of them, stand, remain and be of such like Force and Effect, and of none other, as the same should have been if this Act had never been had ne made.

Making an Estate whereby a Voucher may be used in a Formedon.

V. Provided always, and be it further enacted by the Authority aforesaid, That this Act, or any Thing therein contained, shall not extend to make void any Estate or Conveyance, by Reason whereof any Person or Persons shall use any Voucher in any Writ of *Formedon*, now depending or hereafter to be depending, but that all and every such Vouchers in any Writ of *Formedon* shall stand and be in like Force and Effect, as if this Act had never been had ne made, any Thing before in this Act contained to the contrary notwithstanding.

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(2) The Word Bond extends to fraudulent Feoffments, Judgments, &c. mentioned in the other Parts of the Clause.—Semble Meux v. Howell, ub. supra.

VI. Provided also, and be it enacted by the Authority aforesaid, That this Act, or any Thing therein contained, shall not extend to any Estate or Interest in Lands, Tenements, Hereditaments, Leases, Rents, Commons, Profits, Goods or Chattels, had, made, conveyed or assured, which Estate or Interest is or shall be upon good Consideration and *bona fide* lawfully conveyed or assured to any Person or Persons, or Bodies Politick or Corporate, not having at the Time of such Conveyance or Assurance to them made, any Manner of Notice or Knowledge of such Covin, Fraud or Collusion as is aforesaid; any Thing before mentioned to the contrary hereof notwithstanding.

No. 4. 13 Eliz. c. 5. Estates made upon good Consideration, and bona fide.

VII. This Act to endure unto the End of the first Session of the next Parliament. 50 Ed. 3, c. 6. 2 R. 2, Stat. 2, c. 3. 3 H. 7, c. 4, made perpetual by 29 Eliz. c. 5. See 27 Eliz. c. 4.

No. 5.

13 Elizabeth, c. 10.—Fraudulent Deeds by Spiritual Persons, to defeat their Successors of Remedy for Dilapidations, shall be void.

[See the next Class.]

No. 6.

18 Elizabeth, c. 2.—For the Explanation of the Statutes, intituled, Against the Defeating of Dilapidations, and against Leases to be made of Spiritual Promotions in some Respects.

[See the next Class.]

No. 7.

27 Elizabeth, c. 4.—An Act against covinous and fraudulent Conveyances.

27 Eliz. c. 4. 13 Eliz. c.

'FORASMUCH as not only the Queen's most excellent Majesty, but also divers of her Highness's good and loving Subjects, and Bodies Politick and Corporate, after Conveyances obtained or to be obtained, and Purchases made or to be made, of Lands, Tenements, Leases, Estates and Hereditaments, for Money or other good Considerations, may have, incur and receive great Loss and Prejudice by Reason of fraudulent and covinous Conveyances, Estates, Gifts, Grants, Charges and Limitations of Uses heretofore made or hereafter to be made, of, in or out of Lands, Tenements or Hereditaments so purchased or to be purchased; which said Gifts, Grants, Charges, Estates, Uses and Conveyances were, or hereafter shall be, meant and intended by the Parties that so make the same to be fraudulent and covinous, of Purpose and Intent to deceive such as have purchased or shall purchase the same; or else by the secret Intent of the Parties the same be to their own proper Use, and at their Free Disposition, coloured nevertheless by a fained Countenance and

No. 7.
27 Eliz. c. 4.

'Shew of Words and Sentences, as though the same were made *bona* '*fide*, for good Causes, and upon just and lawful Considerations:'

50 Ed. 3, c. 6. 2 R. 2, stat. 2, c. 3. 3 H. 7, c. 4.

Fraudulent Conveyances made to deceive Purchasers shall be void.

Moor, 602. pl 833, 615. pl. 843. 1 Roll, 167. Lane, 47. Bridgm 22. Goldsb. 8, pl. 11 3 Co. 80. 5 Co. 60. 6 Co. 72. 11 Co. 74. Cro. El. 44. Cro. Jac. 168. Vin. V. 13--526. Cok. Entr. 677. Hob. 166.

II. For Remedy of which Inconveniences, and for the Avoiding of such fraudulent, fained and covinous Conveyances, Gifts, Grants, Charges, Uses and Estates, and for the Maintenance of upright and just Dealing in the purchasing of Lands, Tenements and Hereditaments; Be it ordained and enacted by the Authority of this present Parliament, That all and every Conveyance, Grant, Charge, Lease, Estate, Incumbrance and Limitation of Use or Uses, of, in or out of any Lands, Tenements or other Hereditaments whatsoever, had or made any Time heretofore sithence the Beginning of the Queen's Majesty's Reign that now is, or at any Time hereafter to be had or made for the Intent and of Purpose to defraud and deceive such Person or Persons, Bodies Politick or Corporate, as have purchased or shall afterwards purchase in Fee-simple, Fee-tail, for Life, Lives or Years, the same Lands, Tenements and Hereditaments, or any Part or Parcel thereof, so formerly conveyed, granted, leased, charged, incumbred or limited in Use, or to defraud and deceive such as have or shall purchase any Rent, Profit or Commodity in or out of the same, or any Part thereof, shall be deemed and taken only as against that Person and Persons, Bodies Politick and Corporate, his and their Heirs, Successors, Executors, Administrators and Assigns, and against all and every other Person and Persons lawfully having or claiming by, from or under them, or any of them, which have purchased or shall hereafter so purchase for Money or other good Consideration, the same Lands, Tenements or Hereditaments, or any Part or Parcel thereof, or any Rent, Profit or Commodity in or out of the same, to be utterly void, frustrate and of none Effect; any Pretence, Colour, fained Consideration, or expressing of any Use or Uses to the contrary notwithstanding.

The Penalty of the Parties to fraudulent Conveyances, who do avow the same.

III. And be it further enacted by the Authority aforesaid, That all and every the Parties to such fained, covinous and fraudulent Gifts, Grants, Leases, Charges or Conveyances before expressed, or being privy and knowing of the same or any of them, which after the twentieth Day of *April* next coming shall wittingly and willingly put in ure, avow, maintain, justify or defend the same or any of them, as true, simple, and done, had or made, *bona fide*, or upon good Consideration, to the Disturbance or Hindrance of the said Purchaser or Purchasers, Lessees or Grantees, or of or to the Disturbance or Hindrance of their Heirs, Successors, Executors, Administrators or Assigns, or such as have or shall lawfully claim any Thing by, from or under them or any of them, shall incur the Penalty and Forfeiture of one Year's Value of the said Lands, Tenements and Hereditaments so purchased or charged; the one Moiety whereof to be to the Queen's Majesty, her Heirs and Successors, and the other Moiety to the Party or Parties grieved by such fained and fraudulent Gift, Grant, Lease, Conveyance, Incumbrance or Limitation of Use, to be recovered in any of the Queen's Courts of Record, by Action of Debt, Bill, Plaint or Information, wherein no Essoin, Protection or Wager of Law shall be admitted for the Defendant or Defendants; and also being thereof lawfully convicted, shall suffer Imprisonment for one half Year, without Bail or Mainprize.

Conveyances made upon good Considerations, and bona fide.

Goldsb. 118. pl. 2. 2 Roll. 305. 3 Co. 83.

IV. Provided also, and be it enacted by the Authority aforesaid, That this Act or any Thing therein contained shall not extend or be construed to impeach, defeat, make void or frustrate any Conveyance, Assignment of Lease, Assurance, Grant, Charge, Lease, Estate, Interest or Limitation of Use or Uses, of, in, to or out of any Lands, Tenements or Hereditaments heretofore at any Time had or made, or hereafter to be had or made, upon or for good Consideration and *bona*

fide to any Person or Persons, Bodies Politick or Corporate; any Thing before mentioned to the contrary hereof notwithstanding. No. 7. 27 Eliz. c. 4.

V. And be it further enacted by the Authority aforesaid, That if any Person or Persons have heretofore sithence the Beginning of the Queen's Majesty's Reign that now is, made or hereafter shall make any Conveyance, Gift, Grant, Demise, Charge, Limitation of Use or Uses, or Assurance of, in or out of any Lands, Tenements or Hereditaments, with any Clause, Provision, Article or Condition of Revocation, Determination or Alteration, at his or their Will or Pleasure, of such Conveyance, Assurance, Grants, Limitations of Uses or Estates of, in or out of the said Lands, Tenements or Hereditaments, or of, in or out of any Part or Parcel of them, contained or mentioned in any Writing, Deed or Indenture of such Assurance, Conveyance, Grant or Gift; and after such Conveyance, Grant, Gift, Demise, Charge, Limitation of Uses or Assurance so made or had, shall or do bargain, sell, demise, grant, convey or charge, the same Lands, Tenements or Hereditaments, or any Part or Parcel thereof, to any Person or Persons, Bodies Politick and Corporate, for Money or other good Consideration paid or given (the said first Conveyance, Assurance, Gift, Grant, Demise, Charge or Limitation, not by him or them revoked, made void or altered, according to the Power and Authority reserved or expressed unto him or them in and by the said secret Conveyance, Assurance, Gift or Grant,) That then the said former Conveyance, Assurance, Gift, Demise and Grant, as touching the said Lands, Tenements, and Hereditaments, so after bargained, sold, conveyed, demised or charged against the said Bargainees, Vendees, Lessees, Grantees and every of them, their Heirs, Successors, Executors, Administrators and Assigns, and against all and every Person and Persons which have, shall or may lawfully claim any Thing, by, from or under them or any of them, shall be deemed, taken and adjudged to be void, frustrate, and of none Effect, by Virtue and Force of this present Act.

Lands first conveyed with Condition of Revocation, or alteration, and after sold for Money or other good Consideration.

Cro. Jac. 180.

VI. Provided nevertheless, That no lawful Mortgage made or to be made *bona fide*, and without Fraud or Covin, upon good Consideration, shall be impeached or impaired by Force of this Act, but shall stand in the like Force and Effect as the same should have done if this Act had never been had nor made; any Thing in this Act to the contrary in any wise notwithstanding.

Mortgages lawfully made.

VII. And be it further enacted by the Authority aforesaid, That all the whole Tenor and Contents of all Statutes Merchant and Statutes of the Staple, hereafter to be knowledged, shall within six Months next after such Knowledging, be entered in the Office of the Clerk of Recognizances, taken according to the Statute made in the Three and Twentieth Year of the Reign of the late King Henry the Eighth, by the shewing forth of the said Statute Merchant or Statute Staple so knowledged unto the said Clerk; which said Clerk of the Recognizances shall enter, or cause to be entered, the same Statutes into a Book for that Purpose to be provided and safely kept by him, taking eight Pence and no more, for every such Entry.

Statute Merchant &c. shall be entered in the Office of the Clerk of Recognizances

23 H. 8. c. 6.

VIII. And be it further enacted, That if the Party to whom any such Statute Merchant or of the Staple shall be knowledged, his Executors or Administrators, do or shall not within four Months next after the Knowledging of any such Statute, bring and deliver, or cause to be brought and delivered, unto the said Clerk, or his Deputy or Deputies for the Time being, all and every such Statute and Statutes as shall be so knowledged to him or to his Use, whereby and to the Intent that the said Clerk, his Deputy or Deputies, may take and enter a true Copy thereof; That then every such Statute Merchant and of the Staple not so entered shall be void, frustrate and of none

The Statute not entered, void against the Purchaser.

No. 7.
27 Eliz. c. 4.

Effect, against all and every such Person and Persons, and Bodies Politick and Corporate, their Heirs, Successors, Executors, Administrators and Assigns only, as shall after the Knowledging of the said Statutes or any of them purchase for Money or other good Consideration, the Lands, Tenements or Hereditaments which were liable to the same Statute Merchant or of the Staple, or any Part or Parcel thereof, or any Rent, Lease or Profit of or out of the same.

The Forfeiture of the Clerk not entering, or not endorsing a Statute.

IX. And if the said Clerk, or his Deputy or Deputies for the Time being, shall not upon such Shewing and Delivery unto him or them of any Statute Merchant or of the Staple, enter or cause to be entered the same in his said Book within the said Time of six Months, and also endorse upon every such Statute so by him entered, the Day and Year of his said Entry, with his or their own Name; That then every such Clerk failing or defective in that Behalf, shall forfeit and lose for every Statute Merchant and of the Staple so brought unto him or them, and not entered and endorsed, or caused to be entered and endorsed as aforesaid, the Sum of Twenty Pounds; the one Moiety whereof to be to the Queen's Majesty, her Heirs and Successors, and the other Moiety to him or them that will sue for the same in any of the Queen's Courts of Record, by Action of Debt, Bill, Plaint or Information, wherein no Essoin, Protection or Wager of Law shall be allowed.

Clerk of the Recognizances Fees to search.

X. And be it further enacted by the Authority aforesaid, That no Clerk of the said Recognizances shall or may take, for or in Respect of any Search to be made for or concerning any Statute Merchant or of the Staple so to be entered as aforesaid, above two Pence for one Year's Search; and so after the Rate of two Pence for every Year and not above, upon Pain to forfeit and lose to the Party or Parties grieved thereby, twenty Times as much as he shall take contrary to the true Meaning of this Act, to be recovered in any of the Queen Majesty's Courts of Record, by Action of Debt, Bill, Plaint or Information, wherein no Protection or Wager of Law shall be allowed. This Act to continue for the Space of ten Years, and from thenceforth unto the End of the Parliament then next following.

Assurances of Lands defeated, and the Party in Possession at the Time of the Statute.

XI. Provided always, That this Act, nor any Thing therein contained, shall extend or be construed to make good any Purchase, Grant, Lease, Charge or Profit, of, in or out of any Lands, Tenements or Hereditaments heretofore made void, defeated or undone, by Reason of any former Conveyance, Grant or Assurance, so as the Party or Parties or their Heirs or Assigns, which have so defeated or made void the same, were in actual Possession the first Day of this present Parliament, of or in the said Lands, Tenements or Hereditaments, whereof or out of which any such Purchase, Grant, Lease, Charge or Profit was made.

The Authority of the Court of Star-Chamber.

XII. Provided that this Act, nor any Thing therein contained, shall extend in any Sort to restrain or impair the Jurisdiction, Power or Authority of the Court of Star-Chamber. [Made perpetual by 39 El. c. 18. § 32.]

Note to the Statutes on Fraudulent Conveyances.

Introduction.

§ 1. The Statutes 13 and 27 Eliz. have been fully commented upon by Mr. Roberts, in an express Treatise respecting them, of which the Editor has fully availed himself, in the View which is taken of the Subject in the present Note, although very materially differing from that Gentleman in many of his Ideas upon the Subject.

The Statutes in Question, so far as they relate to actual, intentional Fraud, may perhaps be considered as little more than declaratory of the Common

Law, but their Operation extends to several Cases in which Dispositions, unobjectionable in themselves, are rendered invalid in Consequence of the Prejudice which third Persons might receive by allowing their Validity: and the Term *Fraudulent*, as used in the Statutes, and in the Cases which have been decided upon their Construction, is in general intended to denote no more than an Invalidity in certain Dispositions, arising from the Insufficiency of their Consideration, or from other incidental Circumstances, in Consequence of which they are not allowed to operate in Prejudice of other Interests, which the Statutes were particularly intended to protect, and not to express the Immorality of Intention, which is understood in the more general and popular Signification of the Expression. The Kind of Fraud, which is the Object of the Statutes, may therefore, in Respect to the original Disposition, be commonly expressed by the Term *Voluntary*, which, although not used in the Statutes, is of general Occurrence in the Cases that have been decided respecting their Operation.

The Statute 13 Eliz is chiefly for the Protection of Creditors, whose Claims do not immediately regard the particular Property, which is the Subject of the Disposition impeached as invalid, but who have a general Right to obtain Satisfaction by Means of such Property, in Respect of the personal Obligations of the Party making the Disposition.

The Statute 27 Eliz is for the Protection of Purchasers, whose Rights have a direct and immediate Relation to the specific Subject disposed of or affected by the previous Disposition impeached as deficient in legal Validity—and the Relief afforded by this Statute is, in some Cases, more extensive than that which results from the preceding one.

§ 2. In the following View of the Subject, I shall first endeavour to trace the Operation of the Statutes as they affect real Estates, or real and personal Estates equally, reserving the Consideration of the Law peculiarly affecting the Disposition of personal Property for a distinct and subsequent Examination. In this Distribution, real Estates are adverted to generally, as comprising all Rights in Land, although constituting personal Property only, in Respect of the Degree of Interest—the substantial Distinction between the respective Kinds of Property, as connected with the present Discussion, being, that all Interests in real Estates, although only amounting to Chattels in Regard to Property, are regulated by actual Title, whereas the Operation of the Law, upon mere personal or moveable Property, is more particularly determined by the apparent and ostensible Possession.

Di[illegible] Subject.

The Invalidity of the Dispositions affected by the Statutes relates, either I. To the Interests intended to be protected, comprising, 1st, Creditors and others, who are entitled to the Benefit of the Statute 13 Eliz.—2d, Purchasers who are protected by 27 Eliz.; or, II. To the Nature and Character of Dispositions which are impeached as fraudulent, on Account of their being deficient in the Qualities that are requisite for their Support, in Opposition to the respective Interests which are the Object of Protection—and which will be designated by the Term of Voluntary Settlements, reserving (otherwise than incidentally) to a future Period, the Consideration of the Circumstances to which that Term may be properly applied.

Of Settlements void or otherwise, as against Creditors.

§ 3. 1. It is perfectly evident that a voluntary Settlement is void so far as it affects the Rights of Creditors existing as such at the Time of making it.—With Respect to subsequent Creditors, the Validity of the Settlement depends upon the Fact of the Party being indebted at the Time. In Lord Townsend v. Wyndham, 2 Vesey, 1. 10. Lord Hardwicke said, "there is no Case where a Person indebted makes a Conveyance for the Benefit of a Child without valuable Consideration, and dying indebted afterwards, that that shall take Place; but it shall be considered as a Part of his Estate for the Benefit of his Creditors;" and in Stephen v. Clive, 2 Bro. Ch. 90. Lord Kenyon, as Master of the Rolls, relying principally upon the above Observations of Lord Hardwicke, held, 1. That a Settlement after Marriage in Favour of a Wife and Children, by a Person not indebted at the Time, was good against subsequent Creditors, and not within the 13 Eliz.; and, 2. That although the Settler was indebted, yet if the Debt were secured by a Mortgage, the Settlement was good. In Lush v. Wilkinson, 5 Ves. 384, a subsequent Creditor charged Insolvency,

which was denied; the Defendant (the Wife) went into Evidence to shew that her Husband had been in good Circumstances. No Evidence was produced by the Plaintiff;—and an Account and Enquiry being asked on his Behalf, the Master of the Rolls (Lord Alvanley) said, "You appear as a subsequent Creditor, and desire an Account in order to invalidate this Settlement, by proving prior Debts. I have a great Doubt whether you have a Right to come without proving any one antecedent Debt. A single Debt will not do. Every man must be indebted for the common Bills of his House, though he pays them every Week.—It must depend upon this, whether he was in insolvent Circumstances at the Time."—The Bill was dismissed with Costs, with Liberty to file another Bill.—See also to the same Effect, Russell v. Hammond, 1 Atk. 13. Walker v. Burrows, 1 Atk. 93 (decided upon the more extended Construction of St. 21 Ja. I. with Respect to Bankruptcy) Middlecome v. Marlow, 2 Atk. 520.

In the before-mentioned Case of Lord Townsend v. Wyndham, Lord Hardwicke (after adverting to the Difference between Statute 27 Eliz. as to subsequent Purchasers, and 13 Eliz. as to subsequent Creditors) said, "If there is a voluntary Conveyance by one not indebted at the Time, though he afterwards becomes indebted, if that voluntary Conveyance was for a Child, and no particular Evidence or Badge of Fraud to deceive or defraud subsequent Creditors, that will be good; but if any Mark of Fraud, Collusion, or Intent to deceive subsequent Creditors appears, that will make it void, otherwise not, but it will stand, though afterwards he becomes indebted."

In Stileman v. Ashdown, 2 Atk. 477, Lord Hardwicke decreed Satisfaction to Creditors from Estates purchased by the Father in the joint Names of himself and his Son;—the Father having had Possession of the whole Estate, and appeared as visible Owner. His Lordship said, "It is not necessary that a Man should actually be indebted at the Time he enters into a voluntary Settlement to make it fraudulent; for if a Man does it with a View to being indebted at a future Time, that is equally fraudulent, and ought to be set aside. See Fitzer v. Fitzer, 2 Atk. 511, in which a Settlement made upon a Separation between Husband and Wife was postponed to the Claim of a Creditor having an Assignment under an Insolvent Act, without any Reference to the Time when the Debt was contracted, or the Situation of the Husband at that Time.

In Montague v. Lord Sandwich, cited in Kidney v. Coussmaker, 12 Vesey, 155, it was held by Lord Loughborough, that a Settlement is fraudulent only against such Creditors as were Creditors at the Time: and Sir William Grant referring to that Case, says, that though there has been much Controversy, and a Variety of Decisions upon the Question, whether such a Settlement is fraudulent as to any Creditors except such as were Creditors at the Time,—he was disposed to follow the latest Decision—that of Montague and Lord Sandwich. Mr. Vesey states in a Note, that though the Settlement can be affected as fraudulent only as against Creditors at the Time it is made, the Consequence, if it can be so affected, is, that the Subject is thrown into Assets, and all subsequent Creditors are let in; and states that it was so clearly held in Montague and Lord Sandwich.

In Hungerford v. Earle, 2 Vern. 216, the Question as to the Validity of a Settlement against subsequent Creditors, was ordered by the Court of Chancery to be tried at Law. Sed vide White v. Hussey and Others, Prec. in Cha. 14, where all the Lords Commissioners were of Opinion they might decree a Conveyance to be fraudulent without a Trial at Law.

In Russell v. Hammond, (before cited on another Point) 1 Atk. 13, the Father, upon Settlement in Favour of his Son, took back an Annuity to himself and his Wife, which Lord Hardwicke said was a plain Badge of Fraud, as the Annuity was probably the full Value of the Estate comprised in the Deed, and therefore gave the Son nothing, which was almost tantamount to a Continuance in Possession, and had always been deemed a strong Circumstance of Fraud.

[The Editor of Atkyns observes, that the Settlement last mentioned does not appear in the Register's Book, where the Case is stated but very shortly: and it is very difficult to conceive it possible, that Lord Hardwicke should have made such a Determination; for the Circumstance of the Father receiving back an Annuity, was so far from giving Strength to the Position of the Transaction being fraudulent, as voluntary, that it converts it into a Matter

of mere Contract, to say, that because the Father gave the Son nothing, that is, because the Son gave a full Equivalent, the Son should be deprived of the Right, of which, in Respect of that Equivalent, he became a Purchaser, seems to be as plain a Perversion of Justice, as any that can be well imagined. The greater the Annuity, in Proportion to the Value of the Estate, the less fraudulent is the Aspect of the Transaction,—and even in Cases of ordinary Bargain between Strangers, it is not uncommon to sell an Estate in Consideration of a Life Annuity, which in the Nature of Things, will be of greater Amount than the annual Value of the Estate]—See Taylor v Jones, 2 Atk 600, in which the Master of the Rolls held a Settlement of Stock limiting a Life Estate to the Husband void against Creditors, without examining how far the Party was indebted at the Time He said he had always a great Compassion for Wife and Children, yet, on the other Side, it was possible, that if Creditors should not have their Debts, their Wives and Children might be reduced to Want The Observation is certainly true; but as Voluntary Settlements are often supported against Creditors, some other Reasons were requisite to render it very material As to the Power assumed in this Case, over Stock, vi Dundas v Dulens, 1 Ves. Jun. 196 —Rider v. Kidder, 10 Ves. 360

A Person, on whose Behalf a Covenant is entered into, which is contingent at the Time of making the Disposition impeached, as a Wife claiming under Covenant to make a Provision in Case of her surviving, seems to be a sufficient Creditor within the Statute 13 Eliz —Rider v Kidder, 10 Ves 360

A Creditor, to impeach a Settlement in Equity for Fraud, must get Judgment for his Debt —Colman v. Croker, 1 Ves Jun 160 But this Rule apparently does not apply to a Bill for the Administration of the Assets of a Party deceased.

* The general Effect of Marriage Settlements will be more particularly examined in the subsequent Part of this Note, as applicable to Purchasers — In Campion v Cotton, 17 Ves. 268, it is decided at the Rolls, that the Validity of a Settlement previous to Marriage, is not affected by the Husband being indebted at the Time, and the Wife knowing it In that Case it was stated by the Counsel for the Defendant, that no Decision was to be found in which a Settlement previous to and in Contemplation of Marriage, had been considered as void against Creditors; but it was admitted, that a Case shewing enough for that Purpose, might exist, as if the Wife was clearly a Party, and the Marriage a more secure Mode of defrauding the Creditors. By the same Case it appears, that Money expended in improving the Wife's Estate, redeeming Land Tax, enfranchising Copyhold, &c cannot be followed by Creditors

It is a settled Rule, that if a Person, having a general Power of Appointment, makes a voluntary Appointment in Pursuance of such Power, it will except as against a *bona fide* Purchaser from the Appointee inure, in Favour of Creditors, although the Non-execution of the Power cannot be supplied, &c —Holmes v. Coghill, 7 Ves. 499, 12 Ves. 206 —George v Milbanke, 9 Vesey, 190, and the several Cases cited upon this Subject, Powell on Powers, 264 — The Doctrine certainly is a very extraordinary one, as the Principle of the Statutes against fraudulent Conveyances was to prevent the doing such Acts as would militate against the Interests which third Persons would have had in the Subject of the Acts if they had not been done.

A Conveyance not fraudulent within the Statute 13 Eliz may be void in Case of Bankruptcy by the Operation of Stat 21 Jac 1 c 15, as to which see Walker v. Burrows, 1 Atk. 93, above referred to.

§ 4. II. The Construction of the Statute 27 Eliz. has always been very extensive in Favour of Purchasers, and it is settled by a Series of Authorities, that a voluntary Conveyance is void against a subsequent Purchaser, even with Notice—and although there are some Cases which seem to favour the opposite Opinion, the Doctrine may be considered as conclusively established by the Case of Doe on the Demise of Otley v. Manning, 9 East 59, in which, upon a very full and elaborate View of the Subject, the Court declared that they felt themselves bound, by the Weight of Authorities, to give Judgment according to the Settlement. The following Observations are in the concluding Part of Lord Ellenborough's Judgment, " Much Property has no Doubt been purchased, and many Conveyances settled, upon the Ground of

Of Settlement vo[illegible] against Purchaser

Voluntary Settlement [illegible] even with Notice

its having been so repeatedly held, that a voluntary Conveyance is fraudulent, as such, within the Statute of 27 Eliz.—and it is no new Thing for the Court to hold itself concluded, *in Matters respecting real Property*, by former Decisions, upon Questions in Respect of which, if it were *res integra*, they probably would have come to very different Conclusions. And if the adhering to such Determinations is likely to be attended with Inconvenience, it is a Matter fit to be remedied by the Legislature, which is able to prevent the Mischief in future, and to obviate all the inconvenient Consequences which are likely to result from it, as to Purchases already made. And we cannot but say, as at present advised, and considering the Construction put on the Statute, that it would have been better if the Statute had avoided Conveyances only against Purchasers for valuable Consideration, *without Notice of the prior Conveyance*"

The Importance and Justice of the preceding Observations, as to the Necessity of adhering to previous Authorities in Matters respecting real Property, on Account of the injurious and retrospective Consequences which would arise from disturbing them, are very manifest—but I have often taken the Opportunity of expressing my Wish, that the implicit Acquiescence in Authority had been confined to such Cases as these, and to Matters of mere technical Reasoning, in which a Decision of the Question, one Way or the other, is indifferent in its general Consequences; and that the Courts would feel themselves more at Liberty than they do in departing from mere Authority upon Questions of Evidence, of Practice, of personal Contract and Obligation; or Cases where the Adherence to such Authority is confessedly repugnant to the real Purpose of Justice, and no material Inconvenience could arise from the judicial Correction of it, admitting, at all Times, the Caution with which this Principle ought to be adopted—the Presumption in Favour of the subsisting Doctrine—the Inconveniences which even in these Cases may result from the Alteration—and the manifest and evident Utility which alone ought to be deemed sufficient to authorise the Deviation.

With Respect to the particular Subject, there is a Difference of Opinion as to whether the Rule at present established by Authority is not that which, independently of Authority, is most conformable to Justice and the true Intention of the Statute, and a very great Portion of Mr. Roberts' Treatise is employed in maintaining that it is so. I cannot, however, but entertain a very strong and decided Preference in Favour of the opposite Opinion. The Object of the Statutes is evidently to prevent Fraud and Imposition—it is equally clear, that in the Case in Question, no Fraud, no Imposition would be practised by supporting the preceding Conveyance, which is confessedly valid against the Party making it, and those claiming under him by gratuitous Title; and which Conveyance, although not founded upon those Considerations which are regarded as valuable in Point of legal Construction, may be occasioned by very meritorious Inducements. It is said, that the subsequent Conveyance attaches a fraudulent Intention to the first, and therefore is sufficient to invalidate it; whereas it will be quite impossible to bring the Case to any more than, that a Person who has made an actual Donation repents of his having done so and wishes to resume it, but not being enabled to effectuate his Purpose directly, is empowered to effectuate it circuitously, by procuring the Co-operation of a third Person, who, with perfect Knowledge of the facts, agrees to give him a full equivalent, and while the Settler is unable to retract, for his own Use, the immediate Subject of the Disposition, he is assisted by the Law in doing that which is beneficial to himself, and equally injurious in disappointing the Object of his former Bounty.

Of void or valid Settlements in respect of the Considerations

§ 5. Of the Considerations which are sufficient to support a Settlement against the Claims of Creditors, or subsequent Purchasers, the first is Marriage, and it is a settled Principle, that any Settlement made previous to Marriage, or after Marriage, in Pursuance of a written Contract before, is valid; and can only be impeached on the Ground of Deceit and actual Fraud, of which, as stated in Campion v Cotton, 17 Ves. 268, referred to in the preceding Part of this Note, no Instance has occurred by which any Settlement has been in Fact defeated.

Settlements before Marriage or in Pursuance of previous Agreements.

Whether a Settlement after Marriage, in Pursuance of a parol Promise before, and proved only by the subsequent Acknowledgement of the Party, is of equal Efficacy, is a Question which does not appear to be conclusively settled.

In Griffin v. Stanhope, Cro. Jac. 454, the Husband having before Marriage promised to assure to the Wife a Jointure of £1000, and having after Marriage demised Lands to Trustees for 100 Years, if the Wife should so long live, in Trust for her—with an Indorsement declaring that the same should be void upon settling a Jointure according to the first Agreement—it was ruled, that the Lease being made in Pursuance of the first Promise, although there was not any Mention of any Lease to be made, yet it was grounded upon a good Consideration and not fraudulent. In Lavender v. Blackstone, 2 Lev. 146, a Settlement was, under the particular Circumstances, adjudged to be fraudulent—and upon this Point it was said, that although it was proved that upon the Marriage the Husband promised to settle his Estate, when he came to twenty-one, upon himself and his Issue, (which which was agreed to be a sufficient Consideration to avoid Fraud, although Infants are not bound by Law to perform such Promises,) yet the Settlement not having been made until three or four Years after he came of Age, and not being directly according to the Promise, should not be presumed to have been made in Performance of the Promise without direct Proof thereof.

The Provision of the Statute of Frauds, 29 Ch. 2, c. 3, § 3, is, that no Action shall be brought to charge any Person upon any Agreement made in Consideration of Marriage, unless there be a Note in Writing signed by the Party—but it would seem, that the Execution of such an Agreement, in Pursuance of the moral Obligation arising from it, would be as valid in Respect to its incidental Consequences, as the Execution of the Promise referred to in the preceding Case. In the Countess of Montacue v. Maxwell, 1 Str. 235, a Bill was sustained to compel a Settlement pursuant to a verbal Promise before Marriage, supported by a Letter after. The Decree was on the Ground of Fraud, but the Lord Chancellor said, "A parol Promise on Marriage is sufficient Consideration to support a Settlement made agreebly to it after Marriage. This has been frequently determined. So it is also sufficient Consideration to establish a Promise made in Writing after Marriage." The Case has no immediate Reference to the Statute of fraudulent Conveyances, but it is only in Respect to these that the Observation can be understood to have been made, as there are no other Grounds of Objection against which a Settlement after Marriage can require Support from collateral Circumstances. The Report of this Case, 1 P. Wms. 618, refers to a different Stage of the Cause. In an anonymous Case, Prec. Ch. 181, a second Marriage Settlement was recited to be made in Consideration that the Wife had parted with the former Settlement, which appeared to be made after the Marriage, but was *recited to be made* in Consideration of a Marriage Portion; but there was no Proof of any previous Agreement for such Settlement; yet the Court presumed it, and so the second was not voluntary against Bond Creditors. The above Extract is the whole of the Report, and certainly appears too scanty to warrant any decisive Inferences being drawn from it.

The Case of Dundas v. Dutens, 1 Ves. jun. 196, was decided on the Ground of the Bill being fraudulently filed, at the Instance of the Husband, with a View to cheat his Children. It was the Case of Stock belonging to the Wife, settled after Marriage, the Settlement reciting a parol Agreement made before Marriage. Lord Thurlow said, "If there is a parol Agreement for a Settlement upon Marriage, after Marriage a Suit upon the Ground of part Performance would not do, because the Statute is expressed in that Manner—but is there any Case where in the Settlement the Parties recite an Agreement before Marriage, in which it has been considered, within the Statute?" (alluding Case semble to Stat. 13 Eliz.) to which the Solicitor-General, (Lord Eldon,) as Counsel for the Defendant, said, he did not think it would be good. And see upon this Subject Randall v. Morgan, 12 Ves. 67.

It is very obvious, that if a mere Recital, in a Settlement after Marriage, that it was made in Pursuance of a previous parol Agreement, is sufficient to sustain the Settlement against Creditors or Purchasers, a very easy Plan is laid down for giving Effect to such Settlements, even if the Recital should be wholly false, as the Negative would in general be very difficult of Proof; and if the Recital in a single Settlement will not be sufficient, there seems to be

very little Reason in the Distinction, that the making one Settlement with such a Recital, and abandoning it for a subsequent Settlement, shall carry the Matter any farther.

There is a Rule of the Civil Law, that *Qui non protest donare non protest confiteri*, which is evidently founded upon just Principles, and is immediately applicable to the Point in Question.

Marriage Settlements as affecting collateral Objects.

It seems not to be absolutely settled how far the Limitations in a Marriage Settlement in Favour of collateral Objects not within the Marriage Consideration, are valid as against subsequent Purchasers claiming under the Statute 27 Eliz. the Settlement not being supported by any other distinct and independent Consideration. For Instance, whether upon a Marriage by J. S. a Settlement of his Estates in Favour of his Brother, in Failure of Issue by the Marriage, is without other Circumstances valid, as against a Purchaser from J. S.

In the Case of St. Saviour's in Southwark, (4 Jas. I.) Lane 22, it is reported as a Resolution, that if a Man upon the Marriage of one of his Sons covenants to stand seised to the Use of that Son for Life, and then to the Use of his other Sons in Remainder, such Limitations to the other Sons are void against a Purchaser.

In Jenkins v Kemishe, Hardres, 395, 1 Lev. 150, Sir N. K. being Tenant for Life, with Remainder to his Son Charles, in Tail, they suffered a Recovery upon the Marriage of Charles; and in Consideration of the Marriage and a Portion, settled the Estate upon the Husband & Wife, with Remainder to the Heirs of the Body of the Husband by the Wife, with Remainder to the Heirs of the Body of the Wife; and it was ruled, that the Limitation to the Heirs of the Body of the Son by a second Wife, was good against a Mortgage by Sir N. and Charles, and by Hale, C. Baron, it is hard to presume Fraud in this Case, for none is found And the Consideration of Marriage, and the Marriage Portion, will run to all the Estates raised by the Settlement, although the Marriage is not concerned in them so as to make them good against Purchases, and avoid a voluntary Conveyance; and it appears, upon the same Case coming before the Court of Chancery upon another Point, that Lord Keeper Bridgeman held that the Consideration of the Portion paid on the first Marriage extended to the Issue of the second.

In Orgood v. Strode, 2 P. Willms. 245, which was a Suit for carrying into Execution Articles of Agreement against Volunteers, and decided upon Grounds not connected with the present Discussion, some Doubt appears to be thrown upon the general Question. In Bellingham v. Lowther, 1 Ch. Cas. 243, the Court refused to enforce Performance of Covenants in a Marriage Settlement in Favour of collateral Relations, although the Party himself was preparing to execute them in his Life Time, and prevented by Death. But it was said by the Court, that if the Wife, who was a Purchaser under the Articles, had applied, they must have specifically carried them into Execution, and as it seemed, they must have been integrally executed for the Benefit of all collateral Objects, as well as for the Wife, and the Issue of the Marriage.—Rob. 138.

In Vernon v. Vernon, 2 P. Wms. 594, an Agreement was enforced in Favour of Brothers, the Lord Chancellor saying, that no Creditor could be hurt [illegible] specific Performance, Mr. Roberts citing this Case, says, that the Lord Chancellor was clearly of Opinion that such an Agreement ought not to be performed against a Creditor;—but nothing of this Kind appears in the Report. See also Edwards v. the Countess of Warwick, 2 P. Wms. 171—Goring v. Nash, 3 Atk. 186—Stephens v. Trueman, 1 Ves. 73, as to the Execution of Articles in Favour of Collaterals against Volunteers; but even if it should be clearly established that a Court of Equity would refuse to decree in Favour of such Articles against Creditors or Purchasers, that will not affect the Case of an actual Settlement with Reference to the Statutes at present under Consideration. In Jthell v. Beane, 1 Ves. 215, a Bond previous to Marriage to pay £400 amongst the Children of the Marriage, and a Son then living by a former Marriage, was sustained in Favour of the Son (there being no Issue of the Marriage) against the Creditors of the Father. But in Roe, on the Demise of Hammerton v. Mitton, 2 Wilson, 356, the Judgment in Favour of the Brother against a Purchaser, appears to have proceeded solely on the Ground of a distinct Consideration, Lord Ch. J. Wilmot said, "The whole of this Question turns on the Mother's joining in the Settlement;" from which it may be

inferred as his Opinion, that without that Circumstance, the collateral Limitations in the Settlement could not be supported against the Purchaser.

In Brunsden v. Stratton, Prec. Ch. 520, the Husband being under Age at the Time of the Marriage, the Wife's Father gave a Bond to pay him £1500, upon his settling a suitable Jointure Settlement on her; (saying nothing of the Issue) some Years afterwards, on Payment of the Portion, the Husband settled a Jointure on the Wife, and limited the Estate to himself for Life, with Remainder to his Children in strict Settlement, which was sustained against his Bond Creditors, the Master of the Rolls being of Opinion that it was not fraudulent or voluntary, being but adequate to the Wife's Fortune, and that the Words of the Bond were capable of such a Construction, for that a Jointure Settlement must be intended a Settlement in the common Form, to the Issue, and a Jointure for the Wife.

> [N. B. Nothing appears to have been said in this Case as to the Husband being indebted or otherwise, at the Time of the Settlement.]

In Jason v. Jervis, 1 Vern. 284, the Validity of a Settlement as against a Purchaser, was sent to be tried at Law; first against the Wife as to her Estate for Life; and then as to the Remainders to the Children;—"for (by the Lord Keeper) if the Bond before Marriage [which is not noticed in the Statement of the Case] was only for a Jointure, and the Settlement goes further, and entails the Land upon the Children of the Marriage, the Settlement might be good as to the Jointure, and fraudulent as to the Remainders in Respect to a Purchaser." There are, in Fact, many Authorities which it is unnecessary particularly to advert to, that a Settlement may be partly good and partly void.

A Marriage in Scotland, according to the Scotch Law, of Persons going from England for the Purpose, being valid; a Settlement previous to, and in Consideration of a subsequent Marriage in England, is within the Statute. —Ex parte Hall, 1 V. & B. 112.

A Settlement after Marriage is *primâ facie* void, as against Creditors intitled to the general Protection of the Statutes, and Purchasers, but may be supported upon a new Consideration, of which the several Cases about to be cited are Instances; and it may be premised as a settled Principle, that where there is a Settlement founded upon actual Consideration affecting the Interest of any of the Parties, the Adequacy or Inadequacy of such Consideration, in Point of Value, is immaterial, for the mere nominal Consideration of 5s. or 10s. inserted as Matter of Form in all Assurances, is, in this Respect, not regarded, the real Nature of it being fully recognized and understood. The Cases upon this Subject may be divided as follows:—1. When a Father is Tenant for Life, with Remainder to the Son in Tail, the Father's joining in the Settlement by suffering a Recovery, will support the Limitations against the Creditors, (or comme semble the Purchasers from the Son) Russell v. Hammond, 1 Atk. 13, (already cited on other Points)—but in Goodright v. Moses, 2 Bl. 1019, where J. R. being Tenant for Life, with Remainder to Elizabeth, the Wife of T. H. in Tail;—the said Parties levied a Fine to the Use of J. R. for Life, and after with Intent that the Rents might be applied for the Support of T. H. his Wife, and their Children, during the Life of T. H. afterwards for the Maintenance of Elizabeth and her Children during her Life; and after her Decease for the Children;—these Limitations were not sustained against a Lease from Elizabeth after she became a Widow, Lord Ch. J. De Grey delivering the Opinion of the Court generally, that the Deed was only a voluntary Conveyance within the Statute 27 Eliz. being founded only upon a good, and not a valuable Consideration; and that therefore it could not be set up against a *bona fide* Purchaser. It may be observed, that in this Case the Settlement derived no Assistance from the Concurrence of J. R. as Tenant in Tail, in Remainder, that can bar his Issue by Fine, without the Assent of the Tenant for Life.—2. Where the Settlement is made upon an additional Portion paid or agreed to be paid by the Friends of the Wife, which is a good pecuniary Consideration, as to which see Russell v. Hammond, 1 Atk. 13, already cited upon other Points, Jones v. Marsh, Ca. Temp. Tall. 64. Browne v. Jones, 1 Atk. 188. Stileman v. Ashdown, 2 Atk. 477, and this, as it appears, although the Sum agreed to be paid is not paid in Fact, Lord Hardwicke, in Ramsden v. Hilton, 2 Ves. 309, assigns as a Reason for this, that the Issue take from both Parties, and whether they perform their Agreement among

Settlements after Marriage primâ facie void, ro… upon new Consideration.

Father joining in Recovery, &c.

Additional Portion.

themselves, may be immaterial to the Issue. Mr. Roberts observes, p 258, that it is not very easy to comprehend the Force of this Reasoning; but without entering into that Discussion, nothing is more obvious, than that a mere Agreement of one Person may be an adequate Consideration for either a counter Agreement, or an executed Act of another.—

Relinquishment of Jointure or Dower.

3. Where the Wife gives up her Jointure for another Estate of double the Value being settled, the Consideration will support a Limitation to the Children, Scott v. Bell, 2 Lev. 70. Ball v. Burnford, Prec. Ch. 113. As to the Relinquishment of Dower, vi. Lavender v. Blackstone, 2 Lev. 146, in which it was said, that a Wife joining to bar Dower, might be a good Consideration to support a Settlement. Vi. also Dolin v. Coltman, 1 Vern. 294, in which an Agreement that a Wife joining in a Mortgage should have the whole Equity of Redemption, was not supported against subsequent Mortgagees. The Facts of the Case are not sufficiently stated to support any general Inference; and there is no direct Reference to the Statutes under Consideration. Upon Principle, there does not appear any Reason why a Wife's concurring in the Disposition of an Estate out of which she is entitled to Dower, or letting in an Incumbrance which may affect the Dower, should not be equally regarded with any other valuable Consideration.—

Legacy to the Wife.

4. A Settlement upon receiving a Legacy of the Wife, or other Property in her Right, which could only be obtained by the Assistance of a Court of Equity; and in Respect of which the Court would not decree Payment to the Husband without a Settlement, or the express Consent of the Wife.—It would be foreign to the present Purpose to enter into a particular Dissertation upon the Doctrine established by Courts of Equity with Respect to this Subject, as to which see Roberts on Fraudulent Conveyances, Ch. 3 Sec. 10, 11, 12.—Newland on Contracts, Ch. 7. Wright v. Morley, 11 Ves. 12. Murray v. Lord Elibank, 13 Ves. 1. and a recent anonymous Treatise on the Rights, &c of Married Women. The Equity does not extend to Stock in the Funds which a Wife is entitled to previous to Marriage; and of which the Husband may compel the Payment, Pringle v. Hodson, 3 Ves. 617.—

Settlements on Separation.

5. A Settlement upon a voluntary Separation is valid, if there is any specific Consideration as a Covenant to indemnify the Husband from the Debts of the Wife, Stephens v. Clive, 2 Bro. Ch. 90. See Seeling v. Crawley, 2 Vern. 386. Angier v. Angier, Prec. Ch 496. Fitzer v. Fitzer, 2 Atk. 511. See also Maun v. Wilsmo[illegible] T. R. 521, where an Assignment in Consideration of a Sum of Money p[illegible] to the Husband—and in Part for the Payment of his Debts, and subject thereto for the separate Use of the Wife who had been ill treated by the Husband, was held to be valid, in Point of Consideration.

In the Case of Roe on the Demise of Hamerton v. Mittin, 2 Wils. 356, already cited, the Settlement before Marriage was assumed to be voluntary so far as related to the Brothers, except so far as depended upon the Circumstance of the Mother joining, was decided to be made upon valuable Consideration, in Respect of the Mother abandoning the Security for her Annuity upon the whole Estate, and accepting a Security of Part; and this Decision appears to be founded upon a general Principle, and not particularly to depend upon its having any Reference to Marriage.

Settlements previous to a second Marriage for Children of a first.

There is a Class of Cases respecting Settlements made previous to a second Marriage upon Children by a first, which seem rather to depend upon general Principles of Equity as applicable to actual Fraud than to the peculiar Doctrine established by the Statutes at present under Consideration, and which therefore it will not be material more particularly to advert to. See upon this Subject, King v. Cotton, 2 P. Wms. 358—674. Bowes v. Lady Strathmore, 2 Bro. Ch. 345, 1 Ves. Jun. 22. Poulson v. Wellington, 2 P. Wms. 533. Hunt v. Mathews, 1 Vern. 408. Newstead v. Searles, 1 Atk. 265.

Other Considerations.

In Stiles v. the Attorney-General, 2 Atk. 152, the Duke of Wharton having, upon the Ground that the Public Good was advanced by the Encouragement of Learning and the polite Arts, and being pleased with the Attempts of Dr. Young, granted him an Annuity of £100, and afterwards by Indenture reciting that there was an Arrear of the Annuity, and that Dr. Y. had, at the Duke's Request, quitted a Service in the Family of the Earl of Exeter, which he was in, and thereby lost an Annuity, granted him a farther Annuity of £100, and charged his Estate with the said Annuities,—Lord Hardwicke held (as against Creditors) that the Advancement of Learning, though a good Inducement, was not a valuable Consideration; but that the Quitting the Earl of Exeter's Service was a valuable Consideration;—and that the For-

bearance to sue for the Arrears of the first Annuity, was also a valuable Consideration, in Respect whereof the second Annuity ceased to be a voluntary Grant.

In Jameson v. Shipwith, 2 Bro. Ch. 34, it was taken for granted, that an Engagement by a Pupil to his Teacher, as a Remuneration of Gratitude, was not valid as against Creditors

The Compromise of a doubtful Right may form a fair and valuable Consideration. In Peat v. Powell, Amb. 387, a Father having devised Lands of Inheritance, and Lands held upon Lease for Lives, to Giles, his younger Son—John, the elder Son, claimed the Lands of Inheritance, insisting, that the Will was void, and threatened to commence a Suit, unless the younger Son would convey his Right to him, which he did.—Upon a Suit, by the Assignees of Giles, Lord Northington said, "This is not like the Case when Conveyances are made to quiet family Differences, in which the Court will not require strict Equality of Consideration—there was no Equivalent given by John. He did not so much as release his Right to the other Estate. There is no Fraud, but being a voluntary Conveyance it is void against the Creditors of Giles." Mr. Roberts, in a Note to his Citation of this Case, (page 415,) observes, "that the Settlement of disputed Boundaries, and in general the Object of removing Contention and compromising adverse Claims, constitute a good Consideration to support Suits in Equity for the specific Performance of Agreements," and refers to the Opinion of Lord Hardwicke, in Penn v. Lord Baltimore, 1 Vesey, 453—but adds, "that it seems clear, that such Considerations will not be good against Persons coming in upon valuable Considerations," and in a subsequent passage, (page 432,) he refers to Peat v. Powell, as establishing, that a vain Apprehension of possible Danger, or an alarm existing by groundless Menaces, will not form a valuable Consideration for a Conveyance. But in Hill, Clerk, v. the Bishop of Exeter and others, 2 Taunton, 69, Charles Hill, the Father, made a voluntary Conveyance to his Son of the Living of Fremington, and afterwards, upon the Trial of a *Quare impedit*, at the Suit of R. C. claiming the vacant Presentation, against May and others, it was agreed, that May should release to Cooke his Title to the Presentation, and to C. H. his Right to the Advowson—C. H consenting thereto, and agreeing to present May or his Assigns at the next Vacancy; and, in Pursuance thereof, Hill and Cooke released to May the next Advowson. To a Plea setting forth such Release, Hill replied, that May had not any Right whatever to the Advowson—which Replication was upon Demurrer adjudged to be bad—and it was held, that May was, under such Release, a Purchaser for valuable Consideration, so as to defeat the voluntary Conveyance to Hill, the Son—and *per Curiam.* "It is just the same Thing whether May had or had not any actual Title, for he gave up whatever he had, and therefore it is quite immaterial what he had—and there can be no Doubt, in general, that the giving up a Right without Fraud is a valuable Consideration—the Relessor parts with that for which the other Party may very reasonably give Money." This Case, deciding that such a Compromise is a valuable Consideration, which defeats a former voluntary Conveyance, will apply a *Fortiori*, as will appear in the Sequel to shew that a Conveyance, founded upon such Consideration, cannot be impeached in itself as being merely voluntary.

Compromise of a doubtful Right.

A Conveyance in Trust, for Payment of the Debts of the Party making it, is not, without other Circumstances, sufficient to prevent the Operation of the Statutes, as to which see Lord Paget's Case, 1 Leon. 194—Leech v. Leech, Ch. Cas. 249—Tarback v. Marbury, 2 Vern. 510; but if a Creditor be a Party to such Conveyance, and enters into any Agreement for Forbearance, or to release his Debt, it is clearly as Mr. Roberts observes, (p. 431,) a valuable Consideration: and in Langton v. Tracey, 1 Ch. Rep. 33, it was ruled, that such a Conveyance, though no Creditor was a Party, was good against a Creditor with Notice.

Trust for Payment of Debts.

In Twine's Case, 3 Rep. 83, a Case was cited by Anderson, Ch. J. in which a Man of weak Understanding, and incapable of managing an Estate, and being given to Riot, by the Mediation of his Friends, openly conveyed his Lands to them upon Trust, to take the Profits and apply them to his Maintenance, in Order to prevent his wasting and consuming the same—which was supported against a subsequent Purchaser for a small Value, the Purchaser being apparently open to the Imputation of Fraud and Deceit; but the Chief Justice observed, "that such a Conveyance is void as to him who purchases the Land for a valuable Consideration *bona fide* without Deceit or Cunning.

[illegible]

§ 6. It is not essential that the Conveyance, which is impeached as fraudulent, should be made by the same Person from whom the Purchaser derives his Title. This was laid down in Burrel's Case, 6 Rep 72, where a Father, upon the Marriage of his Son, demised Lands to the Son for 1000 Years, and the Son, in the Life-time of his Father, made an Assignment to his own Son, an Infant, which was under the Circumstances held to be fraudulent, and after the Death of his Father sold the Land, covenanting that it was free from all Leases—and two Points are reported as resolved, 1st, That if a Father make a Lease by Fraud and Covin of his Land, in Order to defraud others to whom he may demise or sell it, (as all fraudulent Leases shall be intended,) and, before the Father makes any Sale or Demise, he dies, and the Son, knowing or not knowing of the Case, sells the Land upon good Consideration, in this Case the Vendor shall avoid the Lease by Force of the Statute, (27 Eliz.) for as it is intended and presumed in Law, that every fraudulent Lease is made with the Intent generally to defraud Purchasers, Farmers, &c. in this Generality, every particular Purchaser, Farmer, &c. is included—and the act is well penned, for the Words of the Act are general, and do not require that he who sells the Land shall make the fraudulent Estate or Incumbrance, but if the Estate be fraudulent, &c whoever sells it, the Purchaser shall avoid such fraudulent Estate, and as in the Case at Bar, the two Leases were upon the Evidence thought fraudulent, the Vendee of the Heir might avoid them —2d. That although the Son had nothing in the Inheritance at the Time of the Assignment of the Term; but all the Estate of Inheritance was in his Father; yet when the Father died, and the Son sold the Land, his Vendee shall avoid the Term, (the Assignment being taken upon the Evidence to be fraudulent) for if he had bargained and sold the Term only, the Bargainee might have avoided the fraudulent Assignment, and consequently the Vendee of the whole Fee may avoid it.

In Clerk v. Rutland, Lane 113, a Father made a Lease to a Stranger for forty Years, and continued in Possession, and afterwards conveyed the Lands to a younger Son, who sold it for a valuable Consideration, and it was doubted whether the Purchaser could avoid the Lease; but it was said, that if in that Case the Father had suffered the Land to descend to his eldest Son, then the Purchaser from the eldest Son should avoid the Lease. In Jones v. Purefoy, 1 Vern 45, the Grandfather made a Settlement on the Grandson, which was disputed by the Mortgagee of the Father after the Grandfather's Death, but as to this Point, says the Reporter, they gave this clear Answer —"It was true it was a voluntary Settlement, and if it had been made by the Person that mortgaged these Lands, it should never prevail against a Purchaser, but here the Settlement was made by the Grandfather, and the Estate passed from him; but the Mortgage was made by the Father, who was never seised nor possessed of the Estate."

According to the present Understanding upon the Subject, it is not probable that a mere voluntary Lease made by a Father could be avoided by the Alienee of the Son, to whom the Inheritance had descended, or that the Son could by this Circuity avoid a Disposition of his Father, if made by Deed, which would be effective against Heirs if made by Will. This Observation does not affect the Case where the Deed is affected by actual Fraud according to the popular and common Notion of the Term.

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§ 7. Some Doubts have been entertained as to whether Copyholds are within the Statute 27 Eliz. respecting Purchasers, but the prevailing Opinion seems to be that they are.—See Doe, Demise of Watson v. Routledge, Cowp. 705.—Mr. Roberts justly observes, that how far Surrenders of Copyholds are within the Statute 13 Eliz. with Respect to Creditors may perhaps be doubted, since it may be said that they have not the Effect of delaying, hindering, or defrauding Creditors who cannot issue Process to levy a Debt upon a Copyhold Estate—and notwithstanding that, it has been determined not to be an Act of Bankruptcy on a similar ground.—Exparte Cockshot, pa. 447, n.

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§ 8 A Purchase orig[illegible] and for the Use of third Persons does not fall directly [illegible] hese Statutes, Lady Gorge's Case, Cro Car 550 [illegible] be affected by the general Rules of Courts of Equity [illegible] s is a Question foreign to the present Enquiry, they [illegible] e 1 Jac 1 c. 21, respecting Bankrupts, and 13 Eliz. [illegible] he King's Accountants

Purchases in the Name and for the Use of third Persons

§ 9. Conveyances originally defeasible [illegible] tances occurring subsequently. In Prodgers v L[illegible] laid down, that although a Deed be fraudulent in its C[illegible] a Purchaser, yet it may become good by Matter ex po[illegible] makes a Feoffment by Covin and the Feoffee makes a Fe[illegible] valuable Consideration, the Feoffee of the first Feoffee shall [illegible] and not the Feoffee of the first Feoffor See also, to the same Ef[illegible] Newport's Case, Skinner, 423—S C by the Name of S[illegible] rtle v [illegible] Lev 387—Wilson v Wormal, Godb 161.

Conveyances o[illegible] ly defeasible [illegible] d valid [illegible]

In the before mentioned Case of Prodgers v Langham, a volu[illegible] Settlement upon a Daughter was supported by the Daughter's subsequ[illegible] Marriage So in Kirk v Clark, Prec Ch 275, where the [illegible] told the Friends of the Son's Wife, that he had already settled the Premises upon the Son—and an express Settlement was also made of other Premises So where a Daughter, in whose Favour a Settlement was made, married a [illegible] of Fortune, who was before Marriage advised by Counsel, that the Portion was sufficiently secured—E I. Company v Clavel, Prec. Ch [illegible]77—and see the Observations in Doe v Routledge, Cowp 705.

§ 10 With Respect to the Purchaser intitled to [illegible] Settlement as fraudulent, it has been ruled, that this [illegible] Persons claiming under a Settlement upon a subseque[illegible] Ward, Ch Cas 99, to a Morgager—Saunders v. [illegible] a Lessee for Years at Rack rent, or upon Payment of a [illegible] 2 Vern [illegible]27—Goodright v. Moses, 2 Bl. 1019—Cro Jac 181, a Purchaser of Timber—Hatton v Neale, B[illegible] sioner purchasing a Term, of which there has been [illegible] Assignment, said per Roberts, pa. 376, to be cited fro[illegible] Justice Warburton's Reports. To these may be added, [illegible] v the Bishop of Exeter, 2 Taunt. 69, already cited, of [illegible] Release was made of a disputed Right.

What Persons are Purchasers, intitled to [illegible] Conveyance fraud[illegible]

But the Conveyance is good as against a subsequent [illegible] upon Wife or Children—Needham and Beaumont's Case [illegible] Upton v Basset, Cro Eliz. 445 It seems also, that th[illegible] must be perfectly fair in Respect of Value, and not a mere [illegible] see 3 Rep 83—Doe v. Routledge, Cowp. 705—although [illegible] may not be an Objection A Purchaser for valuable Cons[illegible] second voluntary Conveyance, cannot impeach the Title [illegible] Dame Burg's Case, Moor, 833, where a Person having a re[illegible] Years forged a Lease for ninety, which he sold with all his Land, it was ruled, that as he did not contract for the true [illegible] rest, which was not known, he was not a Purchaser withi[illegible] although, by the general Words, the true Interest would pass.

Mr Roberts observes, that it may be doubted whether that valuable Consideration, which has in some Cases singly preva[illegible] cumulatively tended to support precedent Conveyances agains[illegible] Purchasers, will arm the Purchaser against a prior voluntary Deed [illegible] sufficient to overthrow it. p 388. From the general Tenor of [illegible] should conceive, that it evidently would not, especially accor[illegible] Opinions which have been recently expressed with Regard to th[illegible] struction of the Statute, considered independently of Authority.

Of Powers of Revocation.

§ 11. Upon the 5th Section of 27 Eliz. respecting Powers of Revocation, the following Points have occurred:—It does not extend to the Power of charging the Estate with a particular Sum of Money—Jenkins v. Keymis, 1 Lev 150. It extends to all Cases where in Effect the Power is given to the Grantor—although accompanied by a colourable Condition, as the Payment of a small Sum of Money to a Stranger, or the Consent of a third Person merely appointed by the Grantor—Cross v. Fausterditch, Cro. Jac. 180—Tirbeck v. Marbury, 2 Vern. 510—Griffin v. Stanhope, Cro. Jac. 454—Lavender v. Blackstone, 2 Keble, 526, and see 3 Rep 82; but it is otherwise when the Money is to be paid to Trustees, to be vested in other Estates—Doe v. Martin, 4 T R 39; or where the Consent required is that of a third Person, *bonâ fide*, appointed by all Parties—See Leigh v. Winter, 1 Jones, 411—Buller v. Waterhouse, Sir Thos. Jones, 94, 3 Keb 75.—Hungerford v Earle, 2 Freem. 120. It is immaterial, that the Settlement containing the Power of Revocation is made upon valuable Consideration—as to which see Roberts, 637—Sugden, on Powers, 338 If a Person, having Power to revoke at a future Day, conveys upon valuable Consideration before the Day, the Settlement will be void from the Time when he might revoke.—Bullock v. Thorne, Moor, 611—Twyn's Case, 3 Rep. 82—Garth v. Ersfield, Bridge, 22 The Statute operates, although the Power is previously released—Bullock v. Thorne, Moor, 615—but it may be otherwise if the Release was for valuable Consideration, or the Purchaser had Notice. It seems that the Statute does not operate, if the Grantor by the Conveyance professes to execute the Power of Revocation, and does so informally.—See Sugden, on Powers, ch 8, from which this Paragraph is abridged

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Land fraudulently aliened descends as Assets.

§ 12. Where Land has been fraudulently aliened by the Ancestor, it is in Respect of Creditors regarded as Assets by Descent in the Hands of the Heir—therefore, upon an Issue whether T H. deceased was seised, the Jury having found that T. H. enfeoffed J H. before the Judgment upon which the *Scire Facias* was issued out, the Court gave Judgment, that T. H. still remained seised as to Creditors by Covin—Humberton v. Howgil, Hob. 72 See also Shep. Touch 66.

In Parslow v. Weedon, Eq. Ab. *Creditor and Debtor*, E pl. 7, Lord Macclesfield is reported to have said, that any Settlement or Disposition which a Man makes in his Life-time, whether voluntary or not, shall be good against Creditors, for that was not provided against by the Statute against fraudulent Devises—but a strong Dissatisfaction was expressed with this Opinion, in Brunsden v. Stratton, Prec. Ch. 521—Jones v. March, Ca. Temp Talb. 64—where the Lord Chancellor said, that Mr. Vernon had always grumbled at the Determination of that Case, and never forgave Lord Macclesfield; saying, it was contrary to the constant Practice of the Court. It is clear, that the Statute of fraudulent Devises, to which Lord Macclesfield referred, was wholly foreign to the Subject, which depended upon the Common Law and the Statutes at present under Contemplation. The Statute of fraudulent Devises left the Law as it stood before, and the Principle to be collected from all the Authorities is, that if a Deed was void against Creditors in its Inception, it does not become valid by the Death of the Maker. The Cases of Stileman v. Ashdown, 2 Atk. 477—Russell v. Hammond, 1 Atk. 13—Beaumont v Thorpe, 1 Ves. 27—Lord Townsend v. Windham, 2 Ves, 1—Hylton v. Biscoe, 2 Ves. 304—most of which have been noticed in the preceding Part of this Note,—all proceed upon taking for granted the opposite Opinion to that expressed in Parslow v. Weedon.

Of Assignments of personal Property.

§ 13. With Respect to Assignments of personal Property, (independently of any Consideration founded upon actual Fraud, with Respect to which every Case resolves itself into a Matter of Fact) the Retention of Possession of the Property assigned, is, generally speaking, held to induce a legal Presumption of Fraud.—In Twyne's Case, 3 Rep. 80, the Retention of Possession by the Vendor of the Goods, was only regarded amongst the Circumstances as constituting a Badge and Fraud;—but in Edwards v. Harben, 2 Term Rep. 587, it was established as a general Rule, that unless Possession

accompanies and follows the Deed, it is fraudulent and void This is subject to Exceptions in Cases when the Retention of the Possession of the Goods is connected with the Object of the Deed;—as in Cases of Goods settled upon Marriage, (as to which see Lord Cadogan and Kennett, Cowp. 432) and in other Cases referred to in the Judgment of Edwards and Harben. The actual Delivery of the Goods may be dispensed with when the Nature of the Subject renders it impracticable, or when Acts have taken Place which are equivalent, as in case of Assignment of Goods at Sea, the paper Documents being delivered over;—the Delivery of the Key of a Warehouse in which the Goods are contained,—and other Cases which have frequently been decided, with Reference to the Bankrupt Laws, as to which it may be observed, that whatever is Sufficient to avoid the Effect of the Statute of James, concerning reputed Ownership, applies a *fortiori* to repel the Imputation of a Fraud from a Retention of Possession in Respect to the Statute 13 Eliz c. 5.

In Dewey v Baynton, 6 East, 257, Pictures and other Property at Wendover Castle, belonging to Lord Arundel, were, in Consideration of Lady Arundel relinquishing some Interests under a Settlement in Favour of Lord Arundel, assigned to Trustees for the seperate Use of Lady *A.* and they continued in Possession of Lord *A.* without any Inventory. In an Action against the Sheriff for a false Return, it was left to the Jury whether the Trust Deeds were a Contrivance to defraud Lord *A.*'s Creditors,—or whether they were a *bona fide* Transaction;—and a Verdict being found in Favour of the Transaction, a new Trial was granted in order to bring that Point more distinctly before the Jury,—but it is manifestly the Opinion of the Court, that the mere Possession of the Husband being consistent with the Object of the Deeds, was not in itself sufficient to annul the Transaction, so as to render the Goods liable to an Execution, at the Suit of the Creditors of Lord *A*—The Jury upon the second Trial having found a Verdict for the Creditor, upon an Application for an Injunction, the Lord Chancellor expressed his Opinion very fully in Favour of the general Nature of the Transaction; and directed a Trial in the Common Pleas for the Purpose of settling the Question.—Lady Arundel v. Phips, 10 Vesey, 139 It is however not very easy to discern any Ground of Equity upon which the Court of Chancery were authorised in this Case to exercise a Controul over the Proceedings of a Court of Law, upon what was considered by itself so entirely a legal Question, as to be referred to another Court of Law for its Decision. The ultimate Event of the Case does not appear in the Books.

The Expression of *accompanying and following* the Deeds, which is applied to the Class of Cases at present under Discussion, requires some Consideration with Respect to its Import and Extent; and I take it never to have been held, that the mere Occurrence of any Interval of Time between the Execution of the Deed and the taking of Possession under it, shall at any subsequent Period, however remote, be deemed sufficient to taint the Transaction with Fraud; and I would submit, that if the Possession is taken in mere Pursuance of the Deed, before any other Rights or Interests have intervened, and at a Period when the entire Transaction would have been valid and effectual, such Possession would be sufficient; and this seems to be implied by the Case of Jones v. Dwyer, 15 East, 21, where Goods lying at a Wharf were purchased in December, and an Order given for their Delivery, and no Transfer was obtained upon such Order until the June following, which being before the Bankruptcy of the Seller, the Court decided in Favour of the Title of the Vendee—The Statute of 13th Eliz. was referred to; but the Discussion principally leaned upon the Statute 21 Ja. I. respecting reputed Ownerships in Cases of Bankruptcy.

The Cases upon the Statute of 13 Eliz. relates only to Property assigned without Delivery of Possession from the Person to whom it originally belonged; for it is perfectly clear, that the mere Possession of personal Property, concludes nothing with Respect to the Right.

And when there has been *bona fide* a notorious Charge of Property, the subsequent Possession of the Goods by the Person to whom they belonged, it does not bring the Case within the Statute, accordingly in Cole v. Davies, 1 Lord Raymond, 724, it was said by Holt, Ch Justice, that the Goods of A, are seized upon *fi. fa.* and sold to B *bona fide* upon valuable Consideration, though B permitted A to have Goods in his Possession, upon Condition that A should pay to B the Money as he should raise it by Sale of the Goods, this

will not make the Execution fraudulent; and in such Case, a subsequent Act of Bankruptcy will not prevent the Sale.

[Note] In this Case the Provision respecting reputed Ownership, in Case of Bankruptcy, is not sufficiently attended to.

And in the modern Case of Kidd v. Rawlinson, 2 B & P. 59, the Goods of A being taken under an Execution, were purchased at a public Auction by B, who suffered A to continue in Possession, and to carry on Business, and A having afterwards executed a Bill of Sale of the Goods to C, it was ruled that B was intitled to them as against C; and it was laid down that if B had lent A Money to buy the Goods, and had taken a Conveyance of them, or a Security for his Debt—this arising out of the mere Fact of lending his Money, leaving A in Possession of the Goods—it would not have been a fraudulent Act. And in a very late Case, where a Person assigned his Effects to his Trustees; and the Son, in order to accommodate his Mother, became the Purchaser of the household Goods at a fair Appraisement, and suffered the greater Part of them to remain in the House with his Mother, who continued to reside there, and take Lodgers as before;—it being found by the Jury that the Change of Property was notorious, and that the Assignment was not executed with an intent to defeat either the general Body of Creditors, or any particular Creditor; the Title of the Son was sustained against a subsequent Execution by a Creditor of the Father. Leonard v. Baker, 1 M & S. 251.—See also on this Point, Bull. N. P. 258. Meggitt v. Mills, 1 Ld. Raym. 286. and the late Case of Reed v. Blades, 5 Taunt. 212.

It is agreed, that an actual Intention to defraud Creditors will be sufficient to invalidate a Transaction, which in other Respects would be good. Without entering into an enumeration of the Cases applicable to this Subject, I shall barely refer to Cadogan v. Kennett, Cowp. 432, in which, upon a Settlement of Goods made previous to Marriage, Lord Mansfield said—"The Question in every Case is, whether the Act done is a *bona fide* Transaction, or whether it is a Trick and Contrivance to defeat Creditors."—And Lord Ellenborough in Dewey v. Baynton, 6 East, 257, already referred to, left the Question to the Jury in the precise Terms cited from Cadogan and Kennett; and the Principle was recognized by the Court, though a new Trial was granted for the Purpose of bringing the Facts more distinctly before the Jury.—See the Observations of Lord Eldon on this Subject, in Lady Arundel v. Phipps, 10 Vesey, 139.

See Estwick v. Cailland, 5 T. R. 420, in which a Conveyance by Lord Abingdon of Real and Personal Property in Trust, after deducting Expences to pay one Moiety of the Profits to Lord A. for his own Use, and the other to certain Creditors named in a Schedule, was held good, the Intention of Fraud as against the other Creditors being negatived by the Jury. There was in this Case some apparent Possession in Lord A. after the Deed, which the Court thought sufficiently explained. Buller J. observed, "Fraud is sometimes a Question of Law, sometimes a Question of Fact, and sometimes a mixed Question of Law and Fact. On the whole it appears to me, that the Deed, taken by itself, is a good and valid One; and that there are no extrinsic Circumstances to shew that any Fraud was intended."

As to particular Badges of Fraud, and the Effect of fraudulent Transactions, to deceive the Crown of Forfeitures, &c. see Roberts, ch. 5, § 3.

Part II. Class VIII.

LEASES,*

(And herein of other Dispositions by Spiritual Persons.)

No. 1.

32 Henry VIII. c. 28.—Lessees to enjoy the Farm against the Tenants in Tail.

32 H. VIII. c. 28.

Leases made by Tenants in Fee or Fee tail, in the Right of their Wives or Churches, which be good, which void.

2 Roll. 169, 332, 403, 407. Savil, 85. Hutton, 84. 1 Leon. 59, 148. 3 Leon. 156.

'WHERE great Number of the King's Subjects have heretofore ' taken Leases of Lands, Tenements and other Hereditaments, ' for Term of Years, and divers of them for Term of Lives, and have ' given and paid great Fines and great Sums for the same, and also ' have been at great Costs and Charges, as well in and about great ' Reparations and Buildings upon their said Ferms, as otherwise con- ' cerning their said Ferms; yet notwithstanding the said Fermors, ' after the Deaths or Resignations of their Lessors, have been and be ' daily with great Cruelty expulsed and put out of their said Ferms and ' Takings, by the Heirs or Successors of their said Lessors, or by such ' Persons as have Interest therein after the Deaths or Resignations of ' their said Lessors, by Reason of Privy Gifts of Intail, or for that ' the Lessors had Nothing in the Lands, Tenements or other Heredi- ' taments so letten, at the Time of the Leases thereof made, but only ' in the Right of their Wives, or such other like Cause, to the great ' Impoverishment, and in Manner utter Undoing of the said Fermors:' For Reformation whereof, be it ordained, established and enacted by the King our Sovereign Lord, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, That all Leases hereafter to be made of any Manors, Lands, Tenements, or other Hereditaments by Writing indented under Seal for Term of Years, or for Term of Life, by any Person or Persons being of full Age of twenty-one Years, having any Estate of Inheritance either in Fee-simple or in Fee-tail, (1) in their own Right, or in the Right of their Churches (2) or Wives, or jointly with their Wives, of any Estate of Inheritance made before the Coverture or after, shall be good and effectual in the Law against the Lessors, their Wives,

Leases made by Tenant in Tail or by him which is seised in the Right of his Wife, or Church, &c.

1 Lev. 112. Cro. Jac. 173. 8 Co. 34. 10 Co. 60. Bro. Accept f. 9. Dyer, 51, 363. Co. Lit. 44.

(*) For the general Exposition of these Statutes see Bacon's Abridgement, Title, Leases.

(1) A Lease by Tenant in Tail, according to the Statute, does not bind the Reversion or Remainder.—1 Inst. 44, a. A Lease according to the Statute, with Warranty, is not a Discontinuance—but a Lease for Lives with Warranty, not according to the Statute, is so.—1 Inst. 333, a.—Vaughan's Rep. 383—Walter v. Jackson, 1 Rol. Abr. 633.

(2) This extends to Prebendaries, Chancellors, Archdeacons, Precentors, &c.—Acton v. Pritcher, 4 Leon, 51—Watkinson v. Maine, Cro. Eliz. 350—Bis v. Holt, Lev. 112, Sid. 158.

No. 1.
H VIII c 28

Heirs and Successors, and every of them according to such Estate as is comprised and specified in every such Indenture of Lease, in like Manner and Form as the same should have been, if the Lessor thereof, and every of them, at the Time of the making of such Leases, had been lawfully seised of the same Lands, Tenements and Hereditaments comprised in such Indenture, of a good perfect and pure Estate of Fee simple thereof to their own only Uses

II Provided always, that this Act, or any Thing contained, shall not extend to any Lease to be made of any Manors, Lands, Tenements or Hereditaments, being in the Hands of any Lessee or Fermors by Virtue of any old Lease, unless the same old Lease be expired, surrendered (3) or ended within one Year next after the making of the said new Lease, (4) nor shall extend to any Grant to be made of any Reversion of any Manors, Lands, Tenements or Hereditaments, nor to any Lease of any Manors, Lands, Tenements or Hereditaments which have not most commonly been letten to Ferm, or (5) occupied by the Fermors thereof by the Space of twenty Years next before such Lease thereof made, nor to any Lease to be made without Impeachment of Waste, nor to any Lease to be made above the Number of twenty one Years, or three Lives, to the most from the Day of making thereof (6) and that upon every such Lease there be reserved yearly during the same Lease, due and payable to the Lessors, their Heirs and Successors, to whom the same Lands should have come after the Deaths of the Lessors, if no such Lease had been thereof made, and to whom the Reversion thereof shall appertain, according to their Estates and Interests, as much yearly Ferm or Rent, or more, as hath been most accustomably yielden or paid for the Manors, Lands, Tenements or Hereditaments (7) so to be letten within twenty Years next before such Lease thereof made, and that every such Person and Persons, to whom the Reversion of such Manors, Lands, Tenements or Hereditaments so to be letten shall appertain, as is aforesaid, after the Deaths of such Lessors or their Heirs, shall and may have such like Remedy and Advantage to all Intents and Purposes, against the Lessees thereof, their Executors and Assigns, as the same Lessor should or might have had against the same Lessees So that if the Lessor were seised of any special Estate tail of the same Hereditaments at the Time of such Lease, that the Issue or Heir of that special Estate shall have the Reversion, Rent and Services reserved upon such Lease after the Death of the said Lessor, as the Lessor himself might or ought to have had if he had lived

32 H 8, c 20
Cro El 5, 350
[illegible]
Raym 165
1 Sid 411
Dyer, 115, 246, 271, 279, 314
5 Co 2, 5
2 Rol. 402
5 Co 6
Cro El 602.
Cro Car. 2, 44.
Latch, 257
Bridgm 29
Moor, 759, pl 1050
Hob 325.

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(3) A Lease is good upon a Surrender conditioned to be void if a new Lease is not made within a Week —Wilson v. Carter, 2 Str 1201 A Surrender by taking a new Lease, to commence in future, takes Effect immediately —Semble, Thompson v. Trafford, Popham, 9

(4) This being an enabling Statute, does not apply to Leases made by the Bishop without the Consent of the Dean and Chapter—and which did not require the Aid of the Statute—and such Lease is not restrained by Stat 1 Eliz —Fox v Collier, Moor, 107, Anderson 65.

(5) If the Land has been either most commonly let to farm, or let to farm for more than ten Years of the last twenty, it seems sufficient —See Bacon, Leases

(6) Semble, that a Lease for sixty Years, determinable upon three Lives, is good under this Statute—the Power in the first Part being general—and the Lease not falling within the Proviso, as it does not exceed the Limit, prescribed.—Secus as to Leases under the Statutes, 1 Eliz & 13 Eliz —see Whitlock's Case, 8 Rep 69—Smith v. Tindal, Cro Car 22.

(7) Quære if this authorizes a Letting in several Parts of Premises before let together. Semble, it does —See 4 Cruise —See also Stat 39 & 40 G. III. c 41, infra, No. 14.

III. Provided always, That the Wife be made Party to every such Lease which hereafter shall be made by her Husband of any Manors, Lands, Tenements or Hereditaments being the Inheritance of the Wife, and that every such Lease be made by Indenture in the Name of the Husband and his Wife, and she to seal to the same, and that the Term and Rent be reserved to the Husband and to the Wife, and to the Heirs of the Wife, according to her Estate of Inheritance in the same, and that the Husband shall not in any wise alien, discontinue, grant or give away the same Rent reserved, nor any Part thereof longer than during the Coverture, without it be by Fine levied by the said Husband and Wife; but that the same Rent shall remain, descend, revert or come after the Death of such Husband, unto such Person or Persons and their Heirs in such Manner and Form as the Lands so leased should have done, if no such Lease had been thereof made. No. 1. 32 H. VIII.

IV. Provided also, That this Act extend not to give any Liberty or Power to any Person or Persons to take any other Terms, Leases or Estates of any Manors, Lands, Tenements or other Hereditaments, otherwise than they might lawfully have done before the making of this Act; nor extend to give any Liberty or Power to any Parson or Vicar of any Church or Vicarage for to make any Lease or Grant of any of their Messuages, Lands, Tenements, Tithes, Profits or Hereditaments belonging to their Churches or Vicarages, otherwise or in any other Manner than they should or might have done before the making of this Act; any Thing contained in this Act to the contrary notwithstanding.

V. And furthermore be it enacted by Authority aforesaid, That all Leases at any Time within the Space of three Years next before the sixth Day of *April* in the thirty first Year of our Sovereign Lord the King's Reign, made by Writing indented under Seal, by any Person or Persons of full Age, of whole Memory, not unlawfully coerced, not being Covert Baron, for Term of Years, of any Manors, Lands, Tenements, or other Hereditaments, whereof the Lessor or Lessors were seized of any Estate of Inheritance of and in the same to their own only Use, at the Time of making any such Lease thereof, and whereof the Lessees, their Executors or Assigns, be now in Possession by Virtue of the same Lease, and no Cause of Re-entry or Forfeiture thereof had or made, shall be good and effectual in the Law against the Lessors, their Heirs and Successors, and the Heirs and Successors of every of them, according to the Covenants, Articles and Agreements specified in every such Indenture of Lease. So always there be reserved and yearly payable during the same Lease to the said Lessors, their Heirs or Successors, or to such other as should or ought to have had the same Manors, Lands, Tenements or Hereditaments so leased after the Decease of such Lessors, in case no such Lease had thereof been made, as much yearly Rent for the same, as was at any Time theretofore yielden or paid within twenty Years next before the making of any such Lease, or else such Leases to be of no other Force nor Effect than they were before the making of this present Act.

VI. And moreover for certain Considerations be it enacted by Authority aforesaid, That no Fine, Feoffment or other Act or Acts hereafter to be made, suffered or done by the Husband only, of any Manors, Lands, Tenements or Hereditaments, being the Inheritance or Freehold of his Wife, during the Coverture between them, shall in any wise be or make any Discontinuance thereof, or be prejudicial or hurtful to the said Wife or to her Heirs, or to such as shall have Right, Title or Interest to the same, by the Death of such Wife or Wives, but that the same Wife and her Heirs, and such other to whom such Right shall appertain after her Decease, shall and may

Explained by 1 & 2 H. 8. ... 13 Ed. 1. st. 1, c. 3 & 40.

tully en er into all such Manors, Lands, Tenements &c hen according to their Right and Titles therein any such ment or other Act to the contrary no with tanding, Lnes re Husband and Wife, which reunto the said Wife is party ally except

Dyer , , , 2 Bell 110 111 400 ided furthermore, That this Clause or Act extend no erts to any such Wife, or to her Heirs, for to woe er to be made of any the Inheritance of the Wife by her for Term of one and twenty Years or under, or for Term of three Lives at the uttermost, where y Pent or more or shall be reserved, and yearly ome Le as was at any Tim therefore yielden Y ars next before the m d n or any such Leas r of this present Act, any Thing therein con otwithstanding

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'and Leases, according to the Course of the Common Laws of this 'Realm, unless they should incur the Danger of Perjury: For the Avoiding whereof, and for the due Execution of the Common Law universally within this Realm, and every Place, in one Conformity of Reason to be used; be it ordained, established and enacted, by the Authority of this present Parliament, That all and every peculiar Act, Order, Rule and Estatute heretofore made or hereafter to be made by any Founder or Founders of any Hospital, College, Deanry or other Corporation, at or upon the Foundation of any such Hospital, College, Deanry or Corporation, whereby the Grant, Lease, Gift or Election of the Governor or Ruler of such Hospital, College, Deanry or other Corporation, with the Assent of the more Part of such of the same Hospital, College, Deanry or Corporation, as have or shall have Voice of Assent to the same, at the Time of such Grant, Lease, Gift, or Election hereafter to be made, should be in any wise hindered or let by any one or mo, being the lesser Number of such Corporation, contrary to the Form, Order and Course of the Common Law of this Realm of *England*, shall be from henceforth clearly frustrate, void, and of none Effect; and that all Oaths heretofore taken by any Person or Persons of such Hospital, College, Deanry and other Corporation, shall be, for and concerning the Observance of any such Order, Estatute or Rule, deemed void and of none Effect; and that from henceforth no manner of Person or Persons of any such Hospital, College, Deanry or other Corporation, shall be in any wise compelled to take any Oath for the observing of any such Order, Estatute or Rule, upon the Pain of every Person so giving such Oath, to forfeit for every Time so offending, five Pounds; the one Moiety thereof to be to the Use of our Sovereign Lord the King, and the other Moiety thereof to any of the King's Subjects which will sue for the same in any of the King's Courts of Record, by Action of Debt, Bill, Plaint, Information or otherwise, wherein the Defendant shall not be permitted to wage his Law, nor any Protection nor Essoign, or any other dilatory Plea admitted or allowed.

No. 2. 33 H. VIII c. 27.

In Corporations none shall have a negative Voice.

An Oath shall not be observed which is contrary to this Statute.

No. 3.

1 & 2 Philip & Mary, c. 17.—An Act touching Leases hereafter to be made by certain Spiritual Persons.

'WHERE in the Parliament begun and holden at *Westminster* 'the Eighth Day of *June*, in the Twenty-eighth Year of the 'Reign of our late King of famous Memory, HENRY the Eighth, (1) 'and there continued and kept until the Dissolution of the same Parliament the Eighteenth Day of *July* next following, one Act 'entituled, An Act for the Restitution of the First Fruits in the Time 'of Vacation to the next Incumbent, was had and made, wherein are 'certain Clauses for Leases then made and to be made by Spiritual 'and Ecclesiastical Persons, to endure and be in Force for Term of 'six Years, if the Incumbents did resign their said Spiritual Promotions, or if the same should otherwise become void by the only Act 'of the same Incumbents, as by the same Acts more at large may 'appear: To the Intent the Parsons and Vicars, and others having 'Cure of Souls, may the better attend, and be the more vigilant in 'in their Ministry and Function':

1 & 2 Ph. & M. c. 17. So much of the Stat. of 28 H. 8, c. 11, as concerneth the ratifying of a Lease made by a Spiritual Person of his Benefice to a Lay Man, for some Years after the Lessor's Resignation or Death, altered. Dyer, 255, pl. 7.

II. Be it it enacted by the King our Sovereign Lord, and by the Queen our Sovereign Lady, with the Assents of the Lords Spiritual

(1) Inserted Part I. Class II.

No. 3.
1 & 2 Ph. & M. c. 17

The Stat. of 28 H. 8, c. 11, shall not extend to Leases hereafter to be made by Spiritual Persons.

and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That as much of the same Act as doth concern the making good of the said Leases, ne any Clause, Sentence, Provision or Article therein contained, shall extend or be construed or adjudged to extend to any Lease that shall be made by any Parson, Vicar, or any other having any Spiritual Promotion after the Feast of the Purification of our Lady next coming.

No. 4.

1 Elizabeth, c. 19.—An Act giving Authority to the Queen's Majesty, upon the Avoidance of any Archbishoprick or Bishoprick, to take into her Hands certain of the Temporal Possessions thereof, recompensing the same with Parsonages impropriate and Tenths.*

1 Eliz. c. 19. Leases and other Assurances of Bishops Lands. 5 Co. 2. Cro. Jac. 112. 1 Jac. 1, c. 3.

'THE Lords Spiritual and Temporal and the Commons in this present Parliament assembled, perceiving how necessary it is for the Imperial Crown of this Realm to be repaired with the Restitution of Revenues meet for the same, and having assented and fully accorded to restore to the same Imperial Crown the First-fruits and Tenths of Parsonages impropriate, for the Increase of the Revenue thereof, be also desirous to devise some good Means, whereby the said Revenue of Tenths and Impropriate Benefices might be in the Governance and Disposition of the Clergy of this Realm, being most apt for the same, in such Sort as yet thereby the said Imperial Crown should not be in any wise diminished in the said restored Revenue.'

The Queen impowered to take into her Hand on the Avoidance of any Bishoprick, so much of the Possessions as shall be of the Value of all the Queen's Parsonages appropriate, &c. within the Bishoprick, assuring the Parsonages, &c. to the promoted Bishop.

II. And therefore beseech your Majesty, That it may be enacted by the Authority of this present Parliament, in Manner and Form hereafter following; that is to say, upon the Vacation and Avoidance of every Archbishoprick or Bishoprick within this your Realm of *England* and *Wales*, and other your Highness Dominions, it shall and may be lawful for your Highness, to elect and choose, and to take into your Hands and Real Possession, as much and so many of any the Honours, Castles, Manors, Lands, Tenements or other Hereditaments, being Parcel of the Possessions of any such Archbishoprick or Bishoprick so being void, as the clear yearly Value of all your Majesty's Parsonages Appropriate and yearly Tenths within every such Archbishoprick or Bishoprick shall yearly amount and extend unto; and for the Tryal of every Value of such Honours, Castles, Manors, Lands, Tenements and Hereditaments, it shall and may be lawful for your Highness from Time to Time, to direct your Letters of Commission under your Highness Great Seal of *England* into every such Archbishoprick or Bishoprick, so being void, to such Persons as your Majesty shall think meet and convenient, giving them Authority thereby to survey such Honours, Castles, Manors, Lands, Tenements and Hereditaments, Parcel of the Possessions of the same Archbishoprick or Bishoprick so being void, as to your Majesty shall be thought meet and convenient to be taken into your Highness Hands and Possession, and thereupon to certify the very clear yearly Value thereof, over all Charges and Reprises, into your Highness Court of Exchequer, at such Day and Time as by the said Commission shall be limited and appointed; and after such Certificate into the said Court of Exchequer of the clear yearly Value of such Honours, Castles, Manors, Lands,

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* It is said, that this is a private Act which must be specially pleaded.—Bacon, Abr. Leases, D. and the Authorities there cited.

Tenements and Hereditaments, so had and made, it shall and may be lawful for your Highness, by your Letters Patents, to give and assure unto such Archbishop and Bishop, and his Successors, as shall be preferred and consecrated Archbishop or Bishop of such Archbishoprick or Bishoprick so being void, so much and so many of your yearly Tenths, Tithes and Parsonages appropriated, being within the same Archbishoprick or Bishoprick, as shall be of as much, or of more yearly Value, as the said Honours, Castles, Manors, Lands, Tenements or Hereditaments, so certified into your said Court of Exchequer, be certified unto; and that immediately upon such Gift and Grant made by your Highness, and the same by your Majesty under your Signet or Sign Manual signified unto your Treasurer and Barons of your said Court of Exchequer, together with your Pleasure for the Retaining and Keeping of the said Honours, Castles, Manors, Lands, Tenements or other Hereditaments so certified unto your said Court of Exchequer, in Lieu and Place of the said Tenths, Tithes and Parsonages appropriate, the same and such Honours, Castles, Manors, Lands, Tenements and other Hereditaments, as so shall then be certified into your said Court of Exchequer, shall be adjudged, vested and deemed, by Authority of this present Parliament, actually and really in your Highness, your Heirs and Successors, and be from thenceforth united and annexed to the Imperial Crown of this your Realm for ever, and from thenceforth shall be in the Order, Survey, Rule and Governance of your said Court of Exchequer, in such like Manner and Form, as other your Highness Possessions and Hereditaments be at this present. No. 4. 1 Eliz. c. 19

III. Provided always, and be it enacted by the Authority aforesaid, That this Act, or any Thing herein contained, shall not extend to give any Liberty or Authority to your Highness, to take from any such Archbishoprick or Bishoprick any of the Mansion-houses, commonly used for the Habitation or Dwelling of any such Archbishop or Bishop, or any the Demean Lands commonly used or occupied with any such Mansion or Dwelling-House or Houses or any of them, or to take any other Lands or Tenements commonly used and kept in the Manurance, Tillage or Manual Occupation of any Archbishop or Bishop, for the Maintenance of Hospitality and good Housekeeping; any Thing in this Act contained to the contrary notwithstanding.

IV. Saving to all and every Person and Persons, Bodies Politick and Corporate, their Heirs and Successors, and to the Heirs and Successors of every of them, other than the said Archbishops and Bishops and their Successors, all such Estate, Right, Title, Term, Interest, Rent, Profit, Offices or Commodities, as they or any of them have, should, might or ought to have had, in or to any Honours, Castles, Manors, Lands, Tenements or other Hereditaments whatsoever, in such like Manner, Form and Condition, to all Intents and Purposes, as if this Act had never been had nor made; any Thing herein contained to the contrary notwithstanding.

V. And be it further enacted by the Authority aforesaid, That all Gifts, Grants, Feoffments, Fines or other Conveyance or Estates, from the first Day of this present Parliament, to be had, made, done or suffered by any Archbishop or Bishop, of any Honours, Castles, Manors, Lands, Tenements or other Hereditaments, being Parcel of the Possessions of his Archbishoprick or Bishoprick, or united, appertaining or belonging to any the same Archbishopricks or Bishopricks, to any Person or Persons, Bodies Politick or Corporate, other than to the Queen's Highness, (1) her Heirs or Successors, whereby any

Conveyances by Bishops, &c other than, &c. made void
1 Inst. 44, a.
Moor, 253, pl. 400.
—778, p. 1078.
Cro. El. 874.
Cro. Car. 16, 47.
Vin. V. 8, 564.
See 1 Bur. 221.

(1) This Statute had little Effect, as many Estates were granted to the Queen upon Design that she should grant them over to others, on which Account the Statute 1 Jac. I. c. 3, (post No. 12,) was made.—Co. 71.—Gibson's Codex, 679.—Bacon, Abr. Leases, D.

No. 4.
1 Eliz. c. 19.

Estate or Estates should or may pass from the same Archbishops or Bishops or any of them, other than for the Term of xxj. Years or three Lives, (2) from such Time as any such Lease, Grant or Assurance shall begin, and whereupon the old accustomed yearly Rent or more, shall be reserved and payable yearly during the said Term of xxj Years or three Lives, shall be utterly void and of none Effect, to all Intents, Constructions and Purposes; any Law, Custom or Usage to the contrary in any wise notwithstanding. (3)

(2) A Lease for sixty Years, determinable on three Lives, not good within this Statute.—Whitlock's Case, 8 Rep. 69, b —and see Roe ex dem. Brune v. Prideaux, 10 East, 158, and the Cases there cited, as to Leases under Powers. A Lease to A, for Life—Remainder to B, for Life—Remainder to C, for Life, is not good —Owen v. Apprice, Cro. Car. 95. A Bishop is not restrained from making a concurrent Lease for Years, with the Consent of the Dean and Chapter—but he cannot, even with such Consent, make a Lease for Lives and another for Years, to be existing at the same Time.—Co. Lit. 44, 6.—Bacon, Leases, D. and Authorities, ibid.

(3) As to the Grants of Offices by Bishops, see Bacon's Abridgement, Offices and Officers, D.—See also Trelawney v. Bishop of Winchester, 1 Bur. 219.

No. 5.

13 Elizabeth, c. 10.—Fraudulent Deeds made by Spiritual Persons to defeat their Successors of Remedy for Dilapidations shall be void, &c. (1)

13 Eliz. c. 10.

Wrongs & Frauds practised by divers Ecclesiastical Persons.
Hob. 84.
2 Roll. 169.

'WHERE divers and sundry Ecclesiastical Persons of this Realm, 'being endowed and possessed of ancient Palaces, Mansion-'houses, and other Edifices and Buildings, belonging to their Ecclesi-'astical Benefices or Livings, have of late Years not only suffered the 'same for Want of due Reparations partly to run to great Ruin and 'Decay, and in some Part utterly to fall down to the Ground, con-'verting the Timber, Lead and Stones to their own Benefit and Com-'modity; but also have made Deeds of Gift, colourable Alienations, 'and other Conveyances of like Effect, of their Goods and Chattels in 'their Lives-time, to the Intent and of Purpose, after their Deaths, 'to defeat and defraud their Successors of such just Actions and 'Remedies as otherwise they might and should have had for the same 'against their Executors or Administrators of their Goods, by the 'Laws Ecclesiastical of this Realm, to the great Defacing of the State 'Ecclesiastical, and intolerable Charges of their Successors, and evil 'Precedent and Example for others, if speedy Remedy be not pro-'vided:'

How the Successor shall have Remedy where the Predecessor doth make a fraudulent Deed to defeat him for Dilapidations.
14 Eliz. c. 11, § 17.
1 Leon. 307.

II. Be it therefore enacted by the Queen's most excellent Majesty, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That if any Archbishop, Bishop, Dean, Archdeacon, Provost, Treasurer, Chaunter, Chancellor, Prebendary, or any other having any Dignity or Office in any Cathedral or Collegiate Church within this Realm; or if any Parson, Vicar, or other Incumbent of any Ecclesiastical Living

(1) This and the preceding Act, 1 Eliz. are merely restraining Acts, and do not render valid any Lease not confirmed according to Statute 32 Henry VIII. c. 28, (ante No. 1, in this Class,) or otherwise void.—Co. Lit. 45, a.—This is a public Act—it extends to the King, although not named.—Bacon, Abr. Leases, D. and Authorities there cited.

No. 5.
13 Eliz. c. 10.

whereunto do belong any House or Houses, or other Buildings, which by Law or Custom he is bound to keep and maintain in Reparation; do from henceforth make any Deed or Deeds of Gift or Alienation, or other like Conveyances of his moveable Goods or Chattels, to the Intent and Purpose aforesaid; That then the Successor and Successors of him that shall make such Deed or Deeds of Gift or Alienation, shall and may, commence Suit, and have such Remedy in any Court Ecclesiastical of this Realm competent for the Matter against him or them to whom such Deed or Deeds of Gift or Alienation shall be so made, for the Amendment and Reparation of so much of the said Dilapidations and Decays, or just Recompence for the same, as hath happened by his Fact or Default, in such sort as he might, should or ought lawfully to have, if he or they to whom such Deed or Deeds of Gift or Alienation shall be so made, were Executor or Executors of the Testament and last Will of him that made such Deed or Deeds of Gift or Alienation, or were Administrator or Administrators of his Goods or Chattels; any Law, Custom or other Thing to the contrary in any wise notwithstanding.

1 Roll. 151, 168, 171.
2 Roll. 162, 170, 275. 403, 405, 408.

III 'And for that long and unreasonable Leases made by Colleges, Deans and Chapters, Parsons, Vicars, and other having Spiritual Promotions, be the chiefest Causes of the Dilapidations and the Decay of all Spiritual Livings and Hospitality, and the utter Impoverishing of all Successors Incumbents in the same;' Be it enacted by the Authority aforesaid, That from henceforth all Leases, Gifts, Grants, Feoffments, Conveyances or Estates, to be made, had, done or suffered by any Master and Fellows of any College, Dean and Chapter of any Cathedral or Collegiate Church, Master or Guardian of any Hospital, (2) Parson, Vicar, or any other having any Spiritual or Ecclesiastical Living, or any Houses, Lands, Tithes, Tenements or other Hereditaments, being any Parcel of the Possessions of any such College, Cathedral Church, Chapter, Hospital, Parsonage, Vicarage or other Spiritual Promotion, or any ways appertaining or belonging to the same, or any of them, to any Person or Persons, Bodies Politick or Corporate, (other than for the Term of one and twenty Years, or three Lives, from the Time as any such Lease or Grant shall be made or granted, whereupon the accustomed yearly Rent or more shall be reserved and payable yearly during the said Term) shall be utterly void and of none Effect, to all Intents, Constructions and Purposes; any Law, Custom or Usage to the contrary any ways notwithstanding.

What Conveyances, Time Spiritual Persons may make of their Lands, Tithes, &c.
2 Bulstr. 305.
Moor, 595, pl 802.
No new Lease to be made unless the first expires, &c within three Years, &c.
18 El. c. 11, § 1 by 14 El. c. 11, § 17, &c. not to extend to Leases of Houses, and which are otherwise provided for by that Statute. 1 Mod. 204. Cro. El. 430. Cro. Car. 259. Vaughan, 204. 4 Co. 261. Savil, 129. 2 Co. 46. 6 Co. 37. 11 Co 67. 2 Mod. 56. Co. Lit. 44, a. b. Moor, 459, pl. 636. Goldsb. 171, pl. 102. 1 Brownl. 182. 8 Co. 70. Hob. 269. declared to include Bede Houses, &c. 14 Eliz. c. 14.

IV. Provided nevertheless, and be it enacted by the Authority aforesaid, That this Act, nor any Thing therein contained, shall be taken or construed to make good any Lease or other Grant to be made by any such College or Collegiate Church within either of both the

Leases limited by the private Statutes of any College.

(2) By Stat. 14 Eliz. c. 16, (post No. 8,) it is enacted, that the Words "Master or Guardian" were intended and meant of all Hospitals, *Maison Dieus*, Bede Houses, and other Houses, ordained for the Sustentation and Relief of the Poor, and so shall be expounded. This Act extends to all Colleges, by whatever Name incorporated, whether temporal for the Advancement of the liberal Arts and Sciences, or mere ecclesiastical or mixed—and to all Hospitals, whether the Corporation be sole or aggregate.—Case of Magdalen College, 11 Co. 76. A Lease by Dean and Chapter cannot be vacated during the Continuance of the same Dean—but where there is a Chapter without a Dean, as the Chapter of the Collegiate Church of Southwell, a Lease not conformable to the Statute is void, *ab initio*.—3 Co. 60, Co. Lit. 45, 325.—Hardres, 326

No. 5.
13 Eliz. c. 10.

Universities of *Oxford* and *Cambridge*, or elsewhere within the Realm of *England*, for more Years than are limited by the private Statutes of the same College.

New Leases made upon the Surrender of old, or former Conveyances.
1 Anders. 65.
Hob. 7.
2 Roll. 401, 416.

V. Provided always, That this Act shall not extend to any Lease hereafter to be made upon Surrender of any Lease heretofore made, or by Reason of any Covenant or Condition contained in any Lease heretofore made, and now continuing, so that the Lease to be made do not contain more Years than the Residue of the Years of the former Lease now continuing shall be at the Time of such Lease hereafter to be made, nor any less Rent than is reserved in the said former Lease. [4 Co. 120. 5 Co. 14. continued by 1 Jac. 1. c. 25 & 21 Jac. 1. c. 28. to the End of the next Session of Parliament, and further continued by 16 Car. 1. c. 4.]

No. 6.

13 Elizabeth, c. 20.—An Act touching Leases of Benefices, and other Ecclesiastical Livings with Cure.*

13 Eliz. c. 20.

How long the Lease of a Benefice shall endure.

THAT the Livings appointed for Ecclesiastical Ministers may not by corrupt and indirect Dealings be transferred to other Uses; Be it enacted by the Authority of this present Parliament, That no Lease after the fifteenth Day of *May* next following the Beginning of this Parliament, to be made of any Benefice or Ecclesiastical Promotion with Cure, or any Part thereof, and not being impropriated, shall endure any longer than while the Lessor shall be ordinarily Resident and serving the Cure of such Benefice without Absence above fourscore Days in any one Year, but that every such Lease, so soon as it or any Part thereof shall come to any Possession or Use above forbidden, or immediately upon such Absence, shall cease and be void; and the Incumbent so offending shall for the same lose one Year's Profit of his said Benefice, to be distributed by the Ordinary among the Poor of the Parish: And that all Chargings of such Benefices, with Cure hereafter with any Pension, or with any Profit out of the same to be yielded or taken, hereafter to be made, other than Rents to be reserved upon Leases hereafter to be made according to the Meaning of this Act, shall be utterly void.

The Parson's Lease to his Curate.

II. Provided, That every Parson by the Laws of this Realm allowed to have two Benefices, may demise the one of them upon which he shall not then be most ordinarily resident, to his Curate only, that shall there serve the Cure for him; but such Lease shall endure no longer than during such Curate's Residence, without Absence above forty Days in any one Year: This Act to continue to the End of the next Parliament. [3 Car. c. 4. made perpetual. Note, That in this Statute, these Words (so soon as it or any Part thereof shall come to any Possession or Use above forbidden, or) are Repealed. 14 Eliz. c. 11. § 14.]

This Statute is repealed by 43 Geo. III. c. 84, § 10—but is inserted on Account of some general References in subsequent Statutes.

No. 7.

14 Elizabeth, c. 11.—An Act for the Continuation, Explanation, Perfecting and Enlarging of divers Statutes. P.

'XI. And where also in the said Parliament begun and holden 'at *Westminster* the said second Day of *April*, there was also one 'other Act and Statute made for the Avoiding of some Leases in 'certain Cases, to be made of Ecclesiastical Promotions with Cure, 'intituled, *An Act touching Leases of Benefices and Ecclesiastical 'Livings with Cure*; which Act was likewise made to continue to 'the End of the next Parliament.

14 Eliz. c. 11.
13 El. c. 20.

'XIV. Provided also, and be it enacted that these Words '[So 'soon as it or any Part thereof shall come to any Possession or Use 'above forbidden, or]' which Words are contained in the said Statute made in the said thirteenth Year, touching Leases of Benefices, and other Ecclesiastical Livings with Cure, shall not be revived by this Act but remain discontinued, and shall from henceforth be omitted out of the said Act; any Thing in the said Act, or in this Act to the contrary notwithstanding.

Certain Words contained in the Statute of 13 Eliz. c. 20, discontinued.

'XV. And where sundry evil-disposed Persons have defrauded 'the true Meaning of the said last mentioned Statute made in the said 'thirteenth Year, by Bonds and Covenants of suffering other Persons 'to enjoy Ecclesiastical Livings, and the Fruits thereof, for that such 'Bonds and Covenants are not in Law taken to be Leases, although 'indeed they amount to as much:' Be it therefore enacted, That all Bonds, Contracts, Promises and Contracts, Promises and Covenants hereafter to be made for suffering or permitting any Person to enjoy any Benefice or Ecclesiastical Promotion with Cure, or to take Profits or Fruits thereof, other than such Bonds and Covenants as shall be made for Assurance of any Lease heretofore made, shall be to all Intents and Purposes adjudged of such Force and Validity and not otherwise, as Leases by the same Persons made of such Benefices and Ecclesiastical Promotions with Cure.

Co. 205.
Bonds and Covenants for the enjoying of Leases shall be void.
43 El. c. 9.
1 Bulstr. 112.
3 Bulstr. 202.
Moor, 641, 883.

XVI. And be it further declared and enacted, That all Leases, Bonds, Promises and Covenants of and concerning Benefices and Ecclesiastical Livings with Cure, to be made by any Curate, shall be of no other nor better Force, Validity or Continuance, than if the same had been made by the beneficed Person himself that demised, or shall demise the same to such Curate

Leases made by Curates, of Benefices with Cure.

'XVII. And where in one other Act made in the said thirteenth 'Year, intituled, *An Act against fraudulent Gifts, to the Intent to 'defeat Dilapidations of Ecclesiastical Livings, and for Leases to be 'granted by Collegiate Churches*, there is one Branch to avoid certain 'Leases to be made by Masters and Fellows of Colleges, Deans, and 'Chapters of Cathedral or Collegiate Churches, Masters or Guardians 'of any Hospital, or by any Parson, Vicar or any other, having any 'Spiritual or Ecclesiastical Living,' Be it enacted, That the said Branch, nor any Thing therein contained, shall not extend to any Grant, Assurance or Lease of any Houses belonging to any the Persons or Bodies Politick or Corporate aforesaid; nor to any Grounds to such Houses appertaining, which Houses be situate in any City, Borough, Town Corporate or Market-Town, or the Suburbs of any of them, but that all such Houses and Grounds may be granted, demised and assured, as by the Laws of this Realm, and the several Statutes of the said Colleges, Cathedral Churches and Hospitals, they lawfully might have been before the making of the said Statute, or lawfully

13 El. c. 10.

Leases made by Spiritual Persons of Houses in Cities or Corporate Towns
2 Leon. 188.
1 Roll. 161.

No. 7. might be if the said Statute were not; so alway that such House be
14 Eliz. c. 11. not the Capital or Dwelling-House used for the Habitation of the Persons abovesaid, nor have Ground to the same belonging above the Quantity of ten Acres; any Thing in the said Act to the contrary notwithstanding.

Money recovered for Dilapidations shall be employed in Repair of the same Houses.

XVIII. And be it further enacted, That all Sums of Money hereafter to be recovered, for or in Name of Dilapidations, by Sentence, Composition or otherwise, shall within two Years after such Receipt be truly employed upon the Buildings and Reparations, in Respect whereof such Money for Dilapidations shall be paid; on Pain that every Person so receiving and not employing as aforesaid, shall forfeit double as much as so shall be by him received and not employed; the which Forfeiture shall be to the Use of the Queen's Majesty, her Heirs and Successors.

Certain Observations in the Leases to be made by Spiritual Persons according to this Statute.
No College shall alien any House without present and sufficient Satisfaction.

XIX. Provided alway, and be it enacted, That no Lease shall be permitted to be made by Force of this Act, in Reversion, (1) nor without reserving the accustomed yearly Rent at the Least, nor without charging the Lessee with the Reparations, nor for longer Term than forty Years at the most; nor any Houses shall be permitted to be aliened, unless that in Recompence thereof there shall be afore, with or presently after such Alienation, good, lawful and sufficient Assurance made in Fee-simple absolutely to such Colleges, Houses, Bodies Politick or Corporate, and their Successors of Lands, of as good Value, and of as great yearly Value at the least, as shall be so aliened; any Statute to the contrary notwithstanding.

The first mentioned 13 Stat. continued until End of the Parliament.

'XX. And forasmuch as all the same several Acts and 'Statutes and every of them do seem good, beneficial and needful to 'be further continued, for the Weal and Profit of this Realm,' Be it therefore now enacted, by the Queen's most excellent Majesty, with the Assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same, That the same several Acts and Statutes and every of them, and all and every Article, Clause and Sentence, in them and every of them contained, shall continue, be and endure in full Force and Effect until the End of the next Parliament. 39 El. c. 18.

(1) A concurrent Lease, there being ten Years expired of the old one, is a Lease in Reversion, and void within this Act.—Hume v. Singleton, Cro. Eliz. 564. Qu. if a Lease under this Statute, to commence within three Years, is good by Stat. 18 Eliz.—Bayley v. Murin, Ventr. 244, 2 Lev. 61.—Vi. Case of Magdalen College, Poph. 8.

No. 8.

14 Elizabeth, c. 16.—An Act for the Assurance of Gifts, Grants, &c. made and to be made to and for the Relief of the Poor in the Hospitals, &c.

4 Eliz. c. 16.

'WHERE our late Sovereign Lord of famous Memory King 'EDWARD the Sixth, by his Letters Patents dated the twenty-'sixth Day of *June*, in the seventh Year of his most gracious Reign, 'did found, erect, and establish three Hospitals in and near to the 'City of *London*, called the Hospitals of King EDWARD the Sixth, 'of *Christ*, *Bridewell*, and *St. Thomas* the Apostle; and by his said 'Letters Patent gave and granted Power and Liberty for purchasing of 'Lands, Tenements and Hereditaments for the Relief and Sustenta-'tion of the Poor in the said Hospitals, as by the said Letters Patents

' more plainly appeareth. And whereas also our late Sovereign Lord No. 8.
' King HENRY the Eighth, by his Letters Patents dated the thirteenth 14 Eliz. c. 6.
' of *January* in the thirty-eighth Year of his Reign, did found an
' Hospital in *West Smithfield* called *Little St. Bartholomew's*, near
' *London* And whereas divers well-disposed and charitable Persons
' have given Lands, Tenements and Hereditaments, to the Relief and
' Sustentation of the Poor, not only in the said Hospitals, but also in
' other Hospitals. And as it is hoped many more hereafter will like-
' wise charitably give, and where many of such Gifts and Assurances
' have been and are likely to be made by the last Wills of the Givers
' thereof, at which Time for Want of Counsel or other Opportunities,
' it may happen that the right Name of the said Corporation hath not
' or shall not be truly named or expressed, whereby may grow some
' Question of the Validity of such Grants, Gifts or Devises :' Be it therefore enacted by the Queen's most excellent Majesty, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That all Gifts, Grants, Legacies, Devises, and Assurances made or to be made of any Lands, Tenements and Hereditaments, by Will, Feoffments or otherwise, to the Use or for the Relief of the Poor in any Hospital now remaining and being in *Esse*, and employed to the Relief or Maintenance of the Poor in the said Hospitals, or any of them, shall be as good and available in Law, according to the true Meaning of any such Donor, Grantor, Testator, Devisor or Assurer, as if the said Corporation had been, or were in the Writings or Deeds of such Gifts, Grants, Devise or Assurance, or in such last Will or Testament, rightly or truly named; any such misnaming, misreciting, or not true naming or reciting of the said Corporation to the contrary notwithstanding: Saving to all and every Person and Persons, Bodies Politick and Corporate, their Heirs and Successors, other than such Donor, Grantor, Testator, Devisor and Assurer, their Heirs and Successors, other than such Donor, Grantor, Testator. Devisor and Assurer, their Heirs and Succesors, all such Right, Title and Interest, as they or any of them have or shall have in or to any Lands, Tenements or Hereditaments so given, granted, devised or assured, as if this Act had never been had nor made. And where in the last Parliament holden at *Westminster* it was provided and enacted among other Things, That from henceforth all Leases, Gifts, Grants, Feoffments, Conveyances 13 El. c. 10, § 2.
or Estates, to be had, made or suffered by any Master and Fellows of any College, Dean and Chapter of any Cathedral Church, Master or Guardian of any Hospital, Parson, Vicar, or any other having any Spiritual Living of any House, Lands, Tenements or Hereditaments, Parcel of the Possession of any such College, Cathedral Church, Hospital, Parsonage, Vicarage or other Spiritual Promotion, or pertaining to the same, or any of them, to any Person or Persons, Bodies Politick or Corporate, other than for Term of one and twenty Years, or three Lives, in Manner and Form as is mentioned in the said Act, should be utterly void and of none Effect. Be it enacted and declared by the Authority of this present Parliament, That these Words, (Master or Guardian,) of any Hospital mentioned in the said former Act, were intended and meant of all Hospitals, *Maison Dieus*, Bead-houses, and other Houses ordained for the Sustentation or Relief of the Poor, and so shall be expounded, declared and taken for ever.

No. 9.

18 Elizabeth, c. 6.—An Act for Maintenance of the Colleges in the Universities, and of *Winchester* and *Eaton.**

18 Eliz. c. 6.

Upon Leases made by Colleges, a third Part of the Rent shall be reserved in Corn.

FOR the better Maintenance of Learning, and the better Relief of Scholars in the Universities of *Cambridge* and *Oxford*, and the Colleges of *Winchester* and *Eaton*, Be it enacted by the Queen's Majesty, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That no Master, Provost, President, Warden, Dean, Governor, Rector or Chief Ruler of any College, Cathedral Church, Hall or House of Learning in any of the Universities aforesaid, nor any Provost, Warden or other Head Officer of the said Colleges of *Winchester* or *Eaton*, nor the Corporation of any of the same, by what Title, Stile or Name soever they now be, shall or may be called, after the End of this present Session of Parliament, shall make any Lease for Life, Lives or Years, of any Farm, or any their Lands, Tenements, or other Hereditaments to the which any Tithes, arable Land, Meadow or Pasture doth or shall appertain, except that the one third Part at the least of the old Rent be reserved and paid in Corn for the said Colleges, Cathedral Church, Halls and Houses; that is to say, in good Wheat after six Shillings and eight Pence the Quarter or under, and good Malt at five Shillings the Quarter or under, to be delivered yearly upon Days prefixed, at the said Colleges, Cathedral Church, Halls or Houses; and for Default thereof, to pay to the said Colleges, Cathedral Church, Halls or Houses, in ready Money, at the Election of the said Lessees, their Executors, Administrators and Assigns after the Rate of the best Wheat and Malt in the Market of *Cambridge*, for the Rents that are to be paid to the Use of the House or Houses there; and in the Market of *Oxford*, for the Rents that are to be paid to the Use of the House or Houses there; and in the Market of *Winchester*, for the Rents that are to be paid to the Use of the House or Houses there; and in the Market of *Windsor*, for the Rents that are to be paid to the Use of the House or Houses at *Eaton*, is or shall be sold the next Market-Day before the said Rent shall be due, without Fraud or Deceit: And that all Leases otherwise hereafter to be made, and all collateral Bonds or Assurance to the contrary, by any of the said Corporations, shall be void in Law to all Intents and Purposes: The same Wheat, Malt, or the Money coming of the same, to be expended to the Use of the Relief of the Commons and Diet of the said Colleges, Cathedral Church, Halls and Houses only, and by no Fraud or Colour let or sold away from the Profit of the said Colleges, Cathedral Church, Halls and Houses, and the Fellows and Scholars in the same, and the Use aforesaid, upon Pain of Deprivation of the Governor and Chief Rulers of the said Colleges, Cathedral Church, Halls and Houses, and all other thereunto consenting.

Mouncken Barn in Sussex.

II. Provided always, That this Act or any Thing therein contained, shall not extend or be in any wise prejudicial to any Lease to be made of a Barn called *Mouncken Barn*, with a certain Portion of Tithes, rising, growing and being in the Parish of *Southweek* in the County of *Sussex*, being Parcel of the Possessions of *Maudlin College*, in *Oxford*, so that the Term demised in and by the said Lease exceed not the Number of ten Years from and after the Feast of St. *Michael*

* This is a private Statute and must be pleaded.—1 Leon. 306.—Saville, 309.

No. 9.
18 Eliz. c. 6

the Archangel next coming; any Thing therein specified to the contrary notwithstanding.

Fifield demised to White.

III. Provided also, That this Act shall not extend to any Lease to be made by the President and Scholars, of the College of St. *John Baptist* in *Oxford*, to any Heir Male of Sir *Thomas White*, late Knight and Alderman of *London*, Founder of the said College; which Lease shall be made according to the Meaning of the Foundation and Statutes of the said College, of the Manor of *Fifield*, and no other Hereditaments.

No. 10.

18 Elizabeth, c. 11.—An Act for Explanation of the Statutes, intituled, Against defeating of Dilapidations, and against Leases to be made of Spiritual Promotions in some respects.

18 Eliz. c. 11

A Lease or other Conveyance to be made of any Spiritual Living, wherein there is a Lease in Being, not to be determined within three Years, and all Bonds and Covenants for renewing thereof, shall be void, &c. A Rehearsal of the Statute of 13 Eliz. c. 10, touching Assurances made by Spiritual Persons of their Lands, Tithes, &c.

'WHEREAS by a Statute made in a Parliament holden at *Westminster* the second Day of *April* in the thirteenth Year of the 'Reign of our most gracious Sovereign Lady, intituled, *An Act against fraudulent Gifts, to the Intent to defeat Dilapidations of Ecclesiastical Livings, and for Leases to be granted by Collegiate Churches,* 'It was amongst other Things enacted by the Authority of Parliament, 'That from thenceforth all Leases, Gifts, Grants, Feoffments, Conveyances or Estates to be made, had, done or suffered, by any Master 'and Fellows of any College, or by any Dean and Chapter of any 'Cathedral or Collegiate Church, Master or Guardian of any Hospital, 'Parson, Vicar or any other having any Spiritual or Ecclesiastical 'Living, or any Houses, Lands, Tithes, Tenements or other Hereditaments, being any Parcel of the Possessions of any such College, 'Cathedral Church, Chapter, Hospital, Parsonage, Vicarage or other 'Spiritual Promotion, or any ways appertaining or belonging to the 'same, or of any of them, to any Person or Persons, Bodies Politick 'or Corporate; other than for the Term of twenty-one Years or three 'Lives, from the Time of any such Lease or Grant shall be made or 'granted, whereupon the accustomed yearly Rent or more shall be 'reserved and payable yearly during the said Term; shall be utterly 'void and of none Effect, to all Intents, Constructions and Purposes; 'any Law, Custom, or Usage to the contrary notwithstandstanding, as 'in the said Act more plainly appeareth:

Practices to defeat the Meaning of the foresaid Statute, 1 Anders. 65.

'II. Sithence the making of which said Estatute, divers of the 'said Ecclesiastical and Spiritual Persons and others, having Spiritual 'or Ecclesiastical Livings, have from Time to Time made Leases for 'the Term of twenty-one Years or three Lives, long before the Expiration of the former Years, contrary to the true Meaning and Intent 'of the said Statute:' Be it therefore enacted by this present Parliament, That all Leases hereafter to be made by any of the said Ecclesiastical, Spiritual or Collegiate Persons or others, of any their said Ecclesiastical, Spiritual or Collegiate Lands, Tenements or Hereditaments, whereof any former Lease for Years is in Being, not to be expired, surrendered (1) or ended within three Years next after the making of any such new Lease, shall be void, frustrate and of none Effect; (2) any Law, Usage or Custom to the contrary notwithstanding.

Leases by Spiritual Persons of their Lands in Lease.

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(1) See as to Surrenders, Stat. 32 H. VIII. c. 28, Section 2, Note 3, No. 1, in this Class.

(2) This does not extend to Leases allowed by Stat. 43 Eliz. c. 11.—Crane v. Taylor, Hob. 269.

No. 10.
18 Eliz. c. 11.

III. And be it likewise enacted by the Authority aforesaid, That all and every Bond and Covenant whatsoever hereafter to be made, for renewing or making of any Lease or Leases, contrary to the true Intent of this Act, or of the said Act made in the said thirteenth Year, shall be utterly void; any Law, Statute, Ordinance or other Thing whatsoever to the contrary in any wise notwithstanding

A Bond or Covenant for the renewing of a Lease void. Moor, 789, pl 1089. Godb. 29.

IV. Provided always, That this Act, nor any Thing therein contained, shall extend to be prejudicial to make frustrate or void any Lease or Leases heretofore made by any of the said Spiritual or Ecclesiastical Person or Persons or any of them, but that the same and every of them are of the like Force and Effect, as they or any of them were before the Making of this present Statute; this Act or any Thing therein contained to the contrary notwithstanding.

Leases made before this Statute.

'V. And where Sir *Thomas White*, late Knight and Alderman of '*London*, for Advancement of good Learning, hath founded one College in the University of *Oxford*, called St. *John Baptist's* College, 'and being seised of the Manor of *Fishyde*, alias *Fifield*, in the 'County of *Berks*, did, together with all other his Lands, Tenements 'and Hereditaments, give and assure the said Manor, with the Appurtenances, to the President and Scholars of the said College for 'ever: And nevertheless the said Sir *Thomas White* having then one '*Ralph White* his Brother living, and sundry Kinsmen, to whom, by 'Course of the Common Law, his Lands might have descended, did 'devise and order, and by the Statutes which he provided for the said 'House, and by Order of the now Visitor of the said College, it is 'ordained, That the said Manor of *Fishyde*, alias *Fifield*, with the 'Appurtenances, should be demised by the said President and Scholars 'for the Time being, to the said *Ralph* for the Term of ninety-nine 'Years, if the said *Ralph* should so long live, and so it is intended, 'that from Heir Male to Heir Male of the said Sir *Thomas White*, 'new Devises should from Time to Time be made of the said Manor 'with the Appurtenances, to every such Heir Male successively for 'the Term of ninety-nine Years, if such Heir Male should so long 'live, yielding to the said President and Scholars for the Time being, 'such Rent as now is reserved, with such further Covenants and 'Conditions, as by the said Sir *Thomas White* or Visitor is agreed 'and appointed:

Sir Thomas White, Founder of Saint John's College in Oxford.

'VI And where since the Decease of the said Sir *Thomas* '*White*, the said Assurances to the said President and Scholars, in 'all, or the most Part of the Lands, Tenements and Hereditaments of 'the said Founder, were found in some Respect imperfect and insufficient in Law, and that thereupon the said *Ralph White*, to whom 'the Advantage of such Imperfection came by Law, did nevertheless 'take no such Advantage, but did willingly make perfect the said 'Assurances according to the true Meaning of the said Sir *Thomas* '*White* his Brother, accepting only one Lease of the said Manor, in 'such Sort as by the said Visitor was appointed, with the Copyholds 'and other Appurtenances of the said Manor:' For Remedy whereof, be it enacted, That the President and Scholars of the said College may from Time to Time demise the said Manor, Copyholds and other Appurtenances to every Heir Male of the said Sir *Thomas White* successively, according to the Form of Lease thereof already made to the said *Ralph*, and that every such Lease so to be made, and every Covenant made or to be made for the Performance of the same, shall be good in Law, as if the said Act made in the said thirteenth Year had never been had nor made; any Thing in the said Act made in the said thirteenth Year, or any other Act or Matter whatsoever to the contrary notwithstanding.

A Lease may be made to Ralph White of the Manor of Fifield by St John's College in Oxford

13 El. c. 10.

No. 10.

'VII. And whereas in one other Statute made in the said [illegible]teenth Year of her Majesty, intituled, *An Act touching Leases of Benefices, and other Ecclesiastical Livings with Cure*, one Clause is contained, That the Incumbent offending the Purport of the said Statute shall for the same lose one Year's Profit of his said Benefice, to be distributed by the Ordinary among the Poor of the Parish, as by the said Branch in the said last recited Statute appeareth:' Be it therefore enacted by the Authority aforesaid, That after Complaint made to the Ordinary, and Sentence given upon any Offence committed by the Incumbent, whereby he shall or ought to lose one Year's Profit of his Benefice as afore shewed, that the Ordinary within two Months after such Sentence given, and Request to him made by the Churchwardens of the said Parish or one of them, shall grant the Sequestration of such Profits to such Inhabitant or Inhabitants within the Parish where such Benefice shall be, as to him shall seem meet and convenient; and upon Default therein by the Ordinary, that it may and shall be lawful to every Parishioner where the Benefice is, to retain and keep his or their Tithes, and likewise for the Churchwardens of the said Parish, to enter and take the Profits of the Glebe Lands, and other Rents and Duties of every such Benefice, to be employed to the Use of the Poor as aforesaid, until such Time as Sequestration shall be committed by the Ordinary, and then as well the Churchwardens as the Parishioners, to yield Account of, and make Payment to him or them to whom such Sequestration shall be committed; and that he or they to whom such Sequestration shall be committed from Time to Time shall justly and truly employ and bestow the said Profits, or the true and just Value thereof, without Fraud or Guile, to such Uses as by the said Statute is limited and appointed, upon Pain of Forfeiture of the double Value of such withholden Profits, to be recovered in the Ecclesiastical Court by the Poor of the said Parish. 1 Co. 120. Co. Lit. 44.

16 Eliz. c. 11. 13 El. c. 20. Repealed 43 G. 3. See 43 El. c. 11. 1 Jac. c. 3.

In what Case Sequestration may be granted by the Ordinary of a Benefice [illegible] contrary to 13 El. c. 20.

In what Case the Parishioners may retain the Tithes.

No. 11.

43 Elizabeth, c. 11.—An Act for Continuanue of divers Statutes, and for Repeal of some others. 13.

VIII. And that an Act made in the thirteenth Year of the Queen's Majesty's Reign that now is, intituled, 'An Act touching Leases of Benefices and other Ecclesiastical Livings with Cure,' together with all and every Explanations, Additions and Alterations thereof, or thereunto made by any other Statute or Statutes made sithence the making of the said Act, and now continuing in Force; with this further Addition to be enacted by Authority of this present Parliament, That all Judgments hereafter to be had, for the Intent to have or enjoy any Lease contrary to the said Statutes, or any of them, shall be deemed void in such Sort as Bonds and Covenants are appointed to be void which are made for that Purpose, shall be continued and remain in Force until the End of the first Session of the next Parliament.*

43 Eliz. c. 11. Leases 13 Eliz. c. 20. Continued. 14 Eliz. c. 11. 18 Eliz. c. 11. Judgments void as Bonds and Covenants for Leases of Benefices with Cure.

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* This and other Statutes, after divers Continuances, are in Effect made perpetual by Stat. 16 Chas. I. c. 4.

No. 12.

1 James I. c. 3.—An Act against the Diminution of the Possessions of Archbishopricks and Bishopricks, and for avoiding of Dilapidations of the same.

1 Jac. I. c. 3.

All Assurances made to the King of the Lands of Bishops shall be void

By the Statute of 1 El. c. 19, no Bishop can make any Lease of his Land but for 21 Years, or three Lives, to a Subject

'WHEREAS all the Archbishopricks and Bishopricks within this Realm of *England*, were in ancient Times founded by his Majesty's most noble Progenitors, Kings of this Realm, and in Respect thereof, his Majesty is lawful and rightful Patron of all and every of the same: And where also by the Laws and Statutes of this Realm, no Archbishop or Bishop can make any Conveyance, Assurance, or Estate whatsoever, of any Honours, Castles, Manors, Lands, Tenements, or Hereditaments, Parcel of the Possessions of his Archbishoprick or Bishoprick, or united, appertaining or belonging to any of the same, to any Subject whatsoever, whereby any Estate should or might pass from any Archbishop or Bishop, other than for Term of One and Twenty Years, or Three Lives, with such Reservations of Rent, and in such Manner and Form, as by the Laws and Statutes are provided: His most Excellent Majesty understanding that divers Persons have, with great Suit and Importunity, sought to frustrate the true End and Intent of the said good Laws and Statutes in that Behalf, of his Christian and Princely Piety and Care, minding so to patronize and protect the said Possessions from Alienation or Diminution, as that the same may, according to the true Intent of the Founders, remain and continue in Succession to the Archbishops and Bishops of this Realm, and their Successors, for the better Maintenance of God's true Religion, keeping of Hospitality, and avoiding of Dilapidations, and thereby for ever hereafter to avoid all Suits and Importunities for or concerning any of the said Possessions, hath, out of his own meer and godly Motion, and of his blessed Disposition for the publick Good, without all Regard of any private Respect, vouchsafed and is pleased, That it may be enacted and established by his Majesty, by and with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled:'

No Bishop shall assure his Land to the King.

10 Co. 62.

11 Co. 71.

II. And be it enacted and established by Authority of the same, That every Archbishop and Bishop within this Realm, and their and every of their Successors, shall be, from and after the End of this present Session of Parliament, for ever wholly and utterly disabled in Law, to make, do, levy or suffer any Act or Acts, Thing or Things, whereby or by Means whereof, any of the said Honours, Castles, Manors, Lands, Tenements, or Hereditaments, or any Part of them, or any of them, shall or may be aliened, assured, given, granted, demised, charged, or in any Sort conveyed to our said Sovereign Lord the King, his Heirs or Successors: And that all Alienations, Assurances, Gifts, Grants, Leases, Charges, and Conveyances whatsoever, from and after the End of this present Session of Parliament, to be done, suffered, or made to our Sovereign Lord the King, his Heirs or Successors, by any Archbishop or Bishop, or their or any of their Successors, of or out of any of the said Possessions, or of or out of any Part or Parcel of them, or any of them, and all and every Confirmation and Confirmations of the same, shall be from and after the End of this present Session of Parliament utterly void and of none Effect, to all Intents, Constructions and Purposes; any former Law, Statute, Act, Ordinance, or other Matter or Thing to the contrary notwithstanding.

Co. Lit. 44.

No. 13.

5 George III. c. 17.—An Act to confirm all Leases already made by Archbishops and Bishops, and other Ecclesiastical Persons, of Tythes and other Incorporeal Hereditaments, for one, two, or three Life or Lives, or twenty-one Years; and to enable them to grant such Leases and to bring Actions of Debt for Recovery of Rents reserved and in Arrear on Leases for Life or Lives.

5 Geo. III. c. 17

WHEREAS it may be doubtful whether, by the Laws now in being, Archbishops or Bishops, Masters and Fellows, or any ' other Head and Members of Colleges or Halls, Deans and Chapters, ' Precentors, Prebendaries, Masters and Guardians of Hospitals, or any ' other Person or Persons having any Spiritual or Ecclesiastical Promotions, heretofore had, or now have, any Power to make or grant any ' Lease or Leases of Tythes, or other Incorporeal Hereditaments only, ' which lie in Grant and not in Livery, for one, two, or three Lives, ' or for any Term or Terms of Years not exceeding Twenty-one Years, ' although the ancient Rent or yearly Sum is thereby mentioned to be ' reserved, and all other Requisites prescribed by the Acts of Parliament now in being to that End, or any of them, were or are justly ' and truly observed and performed, by Reason that there is generally ' no Place wherein a Distress can be had or taken for such Rent or ' yearly Sum; and it may be also doubtful whether, in Cases of such ' Leases for Life or Lives, there is any Remedy in Law for such Ecclesiastical or other Persons by Action of Debt or otherwise, for recovering the Rent or yearly Sum due and in Arrear which is mentioned ' to be reserved on such Leases for Life or Lives: Therefore, for obviating all Doubts touching the same, and enabling the said Archbishops and Bishops, Masters and Fellows, or other Heads and ' Members of Colleges or Halls, Deans and Chapters, Precentors, ' Prebendaries, Masters and Guardians of Hospitals, and other Ecclesiastical Persons, to make valid Leases of such their Incorporeal ' Hereditaments, and to recover the Rents or yearly Sum mentioned to ' be reserved on any Leases by them already granted, or to be granted, ' for one, two, or three Lives, as aforesaid; and also to make good ' and effectual all such Leases as have already been granted by them, ' or any of them:' May it please your Majesty, that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all Leases for one, two, or three Life or Lives, or any Term not exceeding twenty-one Years, already made and granted, or which shall at any Time from and after the passing this Act be made or granted, of any Tythes, Tolls, or other Incorporeal Hereditaments, solely, and without any Lands or Corporeal Hereditaments, by any Archbishop or Bishop, Master and Fellows, or other Head and Members of Colleges or Halls, Deans and Chapters, Precentors, Prebendaries, Masters and Guardians of Hospitals, and every other Person and Persons, who are enabled by the several Statutes now in being, or any of them, to make any Lease or Leases for one, two or three Life or Lives, or any Term or Number of Years not exceeding twenty-one Years, of any Lands, Tenements, or other Corporeal Hereditaments, shall be, and are hereby deemed and declared to be, as good and effectual in Law against such Archbishop, Bishop, Masters and

Leases made by Ecclesiastical Persons, of Incorporeal Hereditaments for Life, or Years, declared to be good.

No. 13. 5 Geo. III. c. 17. Fellows, or other Heads and Members of Colleges or Halls, Deans and Chapters, Precentors, Prebendaries, Masters and Guardians of Hospitals, and other Persons so granting the same, and their Successors, and every of them, to all Intents and Purposes, as any Lease or Leases already made or to be made by any such Archbishop or Bishop, Master and Fellows, or other Heads and Members of Colleges or Halls, Deans and Chapters, Precentors, Prebendaries, Masters and Guardians of Hospitals, and other Persons having Spiritual Promotion, of any Lands or other Corporeal Hereditaments now are, by Virtue of the Statute of the thirty-second Year of King HENRY the Eighth, or any other Statute now in being; any Law, Custom, or Usage, to the contrary thereof in any wise notwithstanding.

32 H. 8, c. 28.

II Provided always, That Nothing herein contained shall extend, or be construed to extend, to enable any Master and Fellows, or other Head and Members of Colleges or Halls, Deans and Chapters, Precentors, Prebendaries, Masters and Guardians of Hospitals, or other Ecclesiastical Persons as aforesaid, to grant Leases for any longer or other Terms than, by the local Statutes of their several Foundations, they are now respectively enabled to do.

Actions may be brought for Rents in Arrear, &c.

III. And be it further enacted and declared by the Authority aforesaid, That in case the Rent or Rents, or yearly Sum or Sums, reserved or made payable in or by any Lease or Leases already made or to be made by any Archbishop or Bishop, Master and Fellows, or other Head and Members of Colleges or Halls, Deans and Chapters, Precentors, Prebendaries, Masters and Guardians of Hospitals, and every other Person and Persons so enabled to make Leases as aforesaid, for one, two, or three Life or Lives, or Years, in pursuance of the several Acts of Parliament already in being, or by this present Act, or any Part thereof, shall be behind or unpaid by the Space of twenty-eight Days next over or after any of the Days whereon the same, by such Lease or Leases, now are or hereafter shall or may be reserved and made payable; then, and so often, and, from Time to Time, as it shall so happen, it shall and may be lawful for such Archbishop or Bishops, Master and Fellows, or other Head and Members of Colleges or Halls, Deans and Chapters, Prebendaries, Precentors, Masters and Guardians of Hospitals, and other Persons so making or granting, or having made or granted, such Leases as aforesaid, or their Executors, Administrators, and Successors respectively, to bring an Action or Actions of Debt against the Lessee or Lessees to whom any such Lease or Leases for Life or Lives, or Years, now are or hereafter shall be made and granted, his, her, or their Heirs, Executors, Administrators, or Assigns, for recovering the Rent or Rents which shall be then due and in Arrear to any such Archbishop or Bishops, Masters and Fellows, or other Heads and Members of Colleges or Halls, Deans, Chapters, Precentors, Prebendaries, Master and Guardians of Hospitals, and other Person or Persons before mentioned, his or their Executors, Administrators, or Successors, in such and the same Manner, and as fully and effectually to all Intents and Purposes, as any Landlord or Lessor, or other Person or Persons, could or might do for recovering of Arrears of Rent due on any Lease or Leases for Life or Lives, or Years, by the Laws now in being; any Law, Statute, Usage, or Custom, to the contrary notwithstanding.

Public Act.

IV. And it is hereby further enacted and declared by the Authority aforesaid, That this Act shall be deemed and taken to be a Public Act; and shall be judicially taken Notice of as such, in all Courts of Law and Equity, without specially pleading the same.

No. 14.

39 & 40 George III. c. 41.—An Act for explaining and amending several Acts, made in the thirty-second Year of King HENRY the Eighth, and the first, thirteenth, and fourteenth Years of the Reign of Queen ELIZABETH, so far as respects Leases granted by Archbishops, Bishops, Masters and Fellows of Colleges, Deans and Chapters of Cathedral and Collegiate Churches, Masters and Guardians of Hospitals, and others having any Spiritual or Ecclesiastical Living or Promotion.

[16th May, 1800.]

39 & 40 Geo. III.

WHEREAS Doubts have arisen whether Archbishops, Bishops, Masters and Fellows of Colleges, Deans and Chapters of Cathedral and Collegiate Churches, Masters and Guardians of Hospitals, and others having any Spiritual or Ecclesiastical Living or Promotion, who are by several Acts, passed in the Reigns of their late Majesties King HENRY the Eighth and Queen ELIZABETH, restrained from granting any Leases of their Estates whereon the accustomed yearly Rent is not reserved, can lawfully grant separate Leases of Parts of Lands or Tenements which have been usually demised by one Lease and under one Rent, reserving on the several Parts so demised less than the Rent anciently reserved on the Demise of the Whole, though the Aggregate Amount of the Rents so reserved on such separate Demises should be equal to or exceed the Amount of the annual accustomed Rent for the Whole: And whereas many such separate Leases have been granted, and great Inconvenience may arise to Persons claiming under such Leases, if such Leases should not be deemed valid and effectual, in case the Amount of the Rent anciently reserved on Demises of the Whole shall appear to have been reserved on the separate Demises of the different Parts; and the Power of dividing Tenements, anciently so demised, in one Parcel at one Rent, may in many Cases tend to improve the Value of the Estates belonging to such Ecclesiastical Persons and Bodies respectively, as well as to the Benefit of their Lessees and the Publick;' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in all Cases where any Honours, Castles, Manors, Messuages, Lands, Tythes, Tenements, or other Hereditaments, being Parcel of the Possessions of any Archbishop, Bishop, Master and Fellows, Dean and Chapter, Master or Guardian of any Hospital, or any other Person or Persons, or Body or Bodies Politick or Corporate, having any Spiritual or Ecclesiastical Living or Promotion, and having been anciently or accustomably demised by one Lease under one Rent, or divers Rents issuing out of the Whole, now are or shall hereafter be demised by several Leases to one or several Persons under an apportioned or several Rents, or where a Part only of such Honours, Manors, Messuages, Lands, Tythes, Tenements, or other Hereditaments as last mentioned, are or shall be demised by a separate Lease or Leases, under a less Rent or less Rents than was or were accustomably reserved for the Whole by such former Lease, and the Residue thereof is or shall be retained in the Possession or Occupation of the Lessor or Lessors, the several and distinct Rents reserved on the

Where any Part of the Possessions of any Archbishop, &c or Person having any Ecclesiastical Living, shall be demised by several Leases, which was formerly demised by one, or where a Part shall be demised for less than the ancient Rent, and the Residue shall be retained in the Possession of the Lessor, the several Rents reserved on the separate Demises of the specifick Parts shall be taken to be the ancient Rents within the Meaning of 32 H. 8, c. 28. 1 Eliz. c. 19. 13 Eliz. c. 10. & 14 Eliz. c. 11.

No. 14. 39 & 40 Geo. III. c. 41.

separate Demises of the several specifick Parts thereof comprised in and demised by such several Leases, shall be deemed and taken to be the ancient and accustomed Rents for such specifick Parts respectively, within the Intent and Meaning of an Act, passed in the thirty-second Year of the Reign of his late Majesty King Henry the Eighth, intituled, *Lessees to enjoy the Farm against the Tenants in Tail*; and of an Act, passed in the first Year of the Reign of her late Majesty Queen Elizabeth, intituled, *An Act giving Authority to the Queen's Majesty, upon the Avoidance of any Archbishop or Bishop, to take into her Hands certain of the Temporal Possessions thereof, recompensing the same with Parsonages impropriate, and Tythes*; and of another Act, passed in the thirteenth Year of the same Queen, intituled, *Fraudulent Deeds made by Spiritual Persons, to defeat their Successors of Remedy for Dilapidations, shall be void*, &c. and of another Act, passed in the fourteenth Year of the Reign of the same Queen, intituled, *An Act for the Continuation, Explanation, perfecting, and enlarging of divers Statutes.*

Demise made before passing this Act not valid, unless the Rents reserved be equal to or more than the Rents accustomably reserved, &c.

II. Provided always, That Nothing herein contained shall extend to confirm or render valid any Demise made before the passing of this Act, unless the several Rents reserved upon the separate Demises of separate Parts of Tenements, theretofore accustomably demised under one entire Lease, shall be equal to or more than the Rent or Rents theretofore accustomably reserved on the entire Demise of the Whole, or in case the Whole should not be demised, but Part reserved in the Possession of the Lessor or Lessors, unless the Rents reserved on the Parts demised should be so far equal to or more than the whole Amount of the ancient Rent or Rents, that the Part not demised should be sufficient to answer the Difference.

Where the Whole of such Premises shall in future be demised in Parts, the aggregate Rents reserved shall not be less than the old accustomed Rent, and so in Proportion where a Part shall be retained in Possession by the Lessor.

III. Provided also, That where the Whole of any such Honours, Castles, Manors, Messuages, Lands, Tythes, Tenements, or other Hereditaments, accustomably demised by one Lease, shall be demised in Parts by several Leases, after the passing of this Act, the aggregate Amount of the several Rents which shall be reserved by such separate Leases, be not less than the old accustomed Rent or Rents theretofore reserved by such entire Lease; and that where a Part only shall be so demised by any such separate Lease, and the Residue shall be retained in the Possession of the Lessor or Lessors, the Rent or Rents to be reserved by such separate Lease or Leases, shall not be less in Proportion to the Fine or Fines to be received on granting such Lease or Leases, than the Rent or Rents accustomed to be reserved for the Whole of the said Premises, was in Proportion to the Fine received on granting the last entire Lease.

No greater Proportion of the accustomed Rent shall be reserved by any separate Lease than the Part of the Premises demised will bear.

IV. Provided also, That no greater Proportion of the accustomed Rent be reserved by any separate Lease hereby confirmed or allowed to be granted, than the Part of the Premises thereby severally demised will reasonably bear and afford a competent Security for.

Where any specifick thing shall have been reserved by the Lessor, it may be charged on a competent Part of the Premises, &c.

V. Provided also, That where any specifick Thing, incapable of Division or Apportionment shall have been reserved or made payable to the Lessor or Lessors, his or their Heirs or Successors, either by Way of Rent, or by any Covenant or Agreement contained in any such entire Lease, the same may be wholly reserved and made payable out of a competent Part of such Lands or Tenements demised by any such several Lease as aforesaid; and in case, in any Lease already granted, and intended hereby to be confirmed, any such Provision shall appear to have been made for the Payment and Delivery of any such Sum or Sums of Money, Stipends, Augmentations, or other Things as aforesaid, the same shall be deemed and taken to have been lawfully made, in case the Lands and Tenements charged therewith shall be of a greater annual Value than the Payment or other Things so charged,

exclusive of the Rent or other annual Payment reserved to the Lessor or Lessors.

No. 14.
39 & 40 Geo. III. c. 41

No Lease confirmed whereon no annual Rent to the Lessor is reserved.

VI. Provided further, that Nothing herein contained shall extend to authorize or confirm any Lease whereon no annual Rent is or shall be reserved to the Lessor or Lessors, his or their Successors or Assigns.

Not to authorize the Reservation of any Rent on any such Lease made by any Master, &c. of any College in the Universities, &c. in any other Manner than is required by 18 Eliz. c. 6.

VII. Provided also, and be it further enacted, That this Act, or any Thing herein contained, shall not authorize the Reservation or Payment of any Rent or Rents upon any such several Lease made or to be made under Authority of this Act, by any Master, Provost, President, Warden, Dean, Governor, Rector, or Chief Ruler of any College, Cathedral Church, Hall or House of Learning, in the Universities of *Oxford* and *Cambridge*, or by the Warden or other Head Officer of the Colleges of *Winchester* and *Eton*, in any other Manner or Proportions than is required by an Act passed in the eighteenth Year of the Reign of her said late Majesty Queen ELIZABETH, intituled, *An Act for the Maintenance of the Colleges in the Universities, and of* Winchester *and* Eton.

Where Payments have been reserved to Vicars, &c. other than the Lessors Provision shall be made in Leases for the future Payment thereof out of Premises of three Times the annual Value, exclusive of the Rent.

VIII. Provided also, That where any such accustomably entire Leases as aforesaid shall have usually contained Covenants on the Part of the Lessee or Lessees for the Payment or Delivery, or shall have in any other Manner subjected or charged such Lessee or Lessees to or with the Payment or Delivery, of any Sum or Sums of Money, Stipend, Augmentation, or other Thing, to or for the Use of any Vicar, Curate, Schoolmaster, or other Person or Persons, other than and besides the Lessor or Lessors, and his or their Heirs or Successors, all or any such Leases as shall hereafter be granted of the same Lands or Tenements in Severalty as aforesaid, shall and may lawfully provide for the future Payment and Delivery of such Sum or Sums of Money, Stipends, Augmentations, or other Things, by and out of any Part or Parts of the Lands or Tenements accustomably charged therewith, not being of less annual Value than three Times the Amount of the Payment so to be charged thereon, exclusive of the Proportion of Rent or other annual Payments to be reserved to the Lessor or Lessors.

Not to confirm the Claim of any Vicar, &c. to such Payment, where it depends only on the Will of the Person granting or renewing the Lease.

IX. Provided always, That Nothing in this Act shall extend to establish or confirm the Claim of any Vicar, Curate, Schoolmaster, or other Person or Persons, to any such Sum or Sums, Salary, Stipend, or other Thing as aforesaid, the Payment and Continuance whereof shall depend only on the Will of the Person or Persons, or Body or Bodies Politick or Corporate, granting or renewing such Lease or Leases respectively.

Persons holding such Leases in Trust, or granting Under Leases of specifick Parts under Covenants of Renewal, may surrender them, that separate Leases may be granted by the original Lessors to the Cestuique Trusts and Under Lessees on reasonable Terms, subject to the accustomed Rent &c.

X. And be it further enacted, That where any Person or Persons now holding, or who shall hereafter hold, any such Lease or Leases as in this Act mentioned, shall or may hold the same, or any specifick Part of the Lands or Tenements thereby demised, in Trust for any other Person or Persons, or for any Body or Bodies Politick or Corporate, or shall have granted any Under Lease or Under Leases of any specifick Part or Parts of his, her, or their respective Holdings, and be under any Covenant or Engagement for Renewal thereof, to any other Person or Persons, Body or Bodies Politick or Corporate, when and as often as his, her, or their own Lease or Leases shall be renewed, it shall and may be lawful for such Person or Persons as first mentioned, at any Time or Times after the passing of this Act, to surrender his, her, or their Lease or Leases, in order that separate and distinct Leases may be granted by the original Lessor or Lessors of such specifick Parts of the same Premises as shall have been held in Trust, or subject to such Covenants or Engagements for Renewal as aforesaid, to the respective Under Lessees and Cestuique Trusts, upon fair and reasonable Terms, subject to an Apportionment of the accustomed

No. 14.
39 & 40 Geo. III. c. 41.

Rent or Rents, and other Payments, according to the Intent and Meaning of this Act; and every such Surrender so made, and the new Leases to be granted thereon, according to the Intent and Meaning of this Act, shall be good and effectual in Law and Equity, notwithstanding such Under Lessees and Cestuique Trusts, or any of them, shall or may be Infants, Issue unborn, Femes Covert, Persons absent from the Realm or otherwise incapacitated to act for themselves, provided that such new Leases respectively be for the Benefit of the several Persons entitled to the Benefit of such surrendered Lease or Leases respectively, and be expressly so declared in the Body of each such new Leases respectively.

Part II. Class IX.

USES.

No. 1.

1 Richard I. c. 1.—All Acts made by or against *Cestuy que use* shall be good against him, his Heirs, and Feoffees in Trust. The several Inconveniences of secret Feoffments. The Estate of Tenant in Tail saved.*

'FIRST, Because that by secret and unknown Feoffments, great 'Unsurety, Trouble, Costs, and grievous Vexations do daily 'grow betwixt the King's Subjects, insomuch that no man that 'buyeth Lands, Tenements, or other Hereditaments, nor the last 'Will of Men to be performed, nor Leases for Term of Life or of 'Years, nor Annuities granted to any Person or Persons for their 'Services for Term of their Lives or otherwise, be in perfect Surety, 'nor without great Trouble and Doubt of the same, by Reason of 'such privie and unknown Feoffments:' For the Remedy whereof it is ordained, established, and enacted, by the Advice of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by Authority of the same, That every Estate, Feoffment, Gift, Release, Grant, Leases, and Confirmations of Lands, Tenements, Rents, Services, or other Hereditaments, made or had or hereafter to be made or had by any Person or Persons being of full Age, of whole Memory, at large and in dures, to any Person or Persons, and all Recoveries and Executions had or made, shall be good and effectual to him to whom it is so made, had or given, and to all other to his Use, against the Seller, Feoffor, Donor, or Granter of the same, and against the Sellers, Feoffors, Donors, or Granters, and his and their Heirs, claiming the same only as Heir or Heirs to the same Sellers, Feoffors, Donors, or Granters, and every of them, and against all other having or claiming any Title or Interest in the same, only to the Use of the same Seller, Feoffor, Donor, or Granter, or Sellers, Donors, or Granters, or his or their said Heirs, at the Time of the Bargain, Sale, Covenant, Gift, or Grant made; saving to every Person or Persons such Right, Title, Action, or Interest, by Reason of any Gift in Tail thereof made, as they ought to have if this Act had not been made.

1 Richard I. c. 10.
Obs. since the Stat.
27 H. 8. c. 10.
1 Co 133.
Cro. El. 187.
2 Roll. 314, 316, 334, 335, 418, 429.
1 Anders. 333.
7 H. 7, f. 6.
15 H 7, f. 12, 13.
26 H. 8, f. 2.
2 Leonard, 153.
1 H. 7, c. 1.
4 H. 7, c. 17.
19 H. 7, c. 15,
27 H. 8, c. 10.

* This Statute, after having been disregarded from the passing of the Statute of Uses, 27 Hen. VIII. for a Period of two Centuries and a Half, was relied upon in Argument as applicable to Terms of Years, in the Case of Goodtitle v. Jones, 7 T. R. 47. It was held not to apply to the Circumstances of that Case; but in Blake v. Foster, 8 T. R. 494, it was referred to by Lawrence, J. as still in Force. Mr. Sugden has, in a Note to Gilbert on Uses and Trusts, p. 67. adduced very satisfactory Reasons for holding that it has not now any Operation whatever.

No. 2.

19 Henry VIII. c. 15.—The Lands of *Cestuy que* Use shall be put in Execution for his Debt, and shall satisfy the Chief Lord, his Relief and Herriot, and he (being a Bondman) may be seised by the Lord.

No. 3.

27 Henry VIII. c. 10.—An Act concerning Uses and Wills. (1)

27 H VIII. c. 10. 1 R 3, c. 1. 1 Co. f. 123. 1 Leon. 14. 2 Leon 16. Lane, 93 3 Bulst. 185, 252 Godbolt, 299, pl. 416.

'WHERE by the Common Laws of this Realm, Lands, Tenements and Hereditaments be not devisable by Testament, nor ought to be transferred from one to another, but by solemn Livery and Seisin, Matter of Record, Writing sufficient made *bona fide*, without Covin or Fraud; yet nevertheless divers and sundry Imaginations, subtle Inventions and Practices have been used, whereby the

(1) It is not the Editor's Intention to enter into a Dissertation upon the extensive System of Law which has arisen from the present Statute, and which forms one of the most important Branches of the Doctrine of real Property.

The general Doctrines arising from the Statute are exhibited in Lord Bacon's Reading on the Statute—in Gilbert's Law of Uses and Trusts—Mr. Sander's Treatise on the same Subject—Mr. Cruise's Chapters on those Subjects in his Digest of the Law of Conveyances, and which are also published in a separate Form—Mr. Sugden's Treatise on the Law of Powers. The Notes of the Gentleman last mentioned have given great Value to his Edition of Gilbert; but it certainly would have been more satisfactory to the present Annotator, if, in Lieu of that Edition, he had presented the Public with an original Work upon the Subject, according to his own Arrangement, availing himself of the Work which he has edited as supplying a valuable Repertory of Materials.

For a less extensive View of the Subject, it is impossible that any Thing could be offered more satisfactory than the Information contained in Blackstone's Commentaries, vol. II ch. 20, p. 327.

The well-known Observation that a Statute made upon great Deliberation, and introduced in the most solemn Manner, has had little other Effect than to make a slight Alteration in the formal Words of a Conveyance. Vaughan 50. 1 Atk. 591. 2 Bl. Com. 336, is certainly not quite warranted by the Fact, as it is manifest, that in Consequence of the Statute, many Modifications of Real Property have been introduced for the Convenience of Families, of which the Common Law was not susceptible; and how little soever the Retention of what was formerly known by the Name of Uses, under the substituted Appellation of Trusts, may have been warranted, upon the true Principles of judicial Construction, it certainly has been attended in many Respects with considerable practical Convenience.

One of the most important Questions, with Relation to the Doctrine of Uses, is upon the Effect of a Limitation to such Uses as a Party shall appoint, and in Default of Appointment; and in the mean Time until Appointment to himself and his Heirs, with Respect to the Claim of Dower against the Appointee under the Power. The great Weight of professional and judicial Opinion, is certainly in Favour of the Validity of the Appointment, as opposed to the Claim of Dower;—the Discussion on this Point by Lord Eldon, in the Case of Maundrell v. Maundrell, 10 Ves. 246, would seem to preclude all reasonable Hesitation upon the Question; but from a Deference to other Opinions which had been incidentally thrown out to the contrary, his Lordship concluded with treating it as a Question still open to Enquiry; and this Mode of Conveyancing, which was formerly very general, has, from the

'Hereditaments of this Realm have been conveyed from one to another No. 3.
'by fraudulent Feoffments, Fines, Recoveries and other Assurances 27 H. VIII. c. 10.
'craftily made to secret Uses, Intents and Trusts; and also by Wills
'and Testaments, sometime made by *nude parolx* and Words, some-
'time by Signs and Tokens, and sometime by Writing, and for the

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Doubts which have been suggested respecting it, entirely given Way to a Limitation with the Intervention of a Trustee, by which the Right of Dower is absolutely prevented.

Nothing certainly can be more striking than the Inconsistency of the Doctrine which subjects Trust Estates to the Right by Courtesy, while it exempts them from the Claim of the Dower. The following Observations of Lord Redesdale, in D'Arcy v. Blake, 2 Scholes & Lefroy, 388, seem to give the true Account of the Origin of the Distinction: "The Difficulty in which the Courts of Equity have been involved, with Respect to Dower, I apprehend originally arose thus: they had assumed as a Principle in acting upon Trusts, to follow the Law; and according to this Principle, they ought in all Cases where Rights attached as legal Estates, to have attached the same Rights upon Trusts; and Consequently to have given Dower of an equitable Estate. It was found, however, that in Cases of Dower, this Principle, if pursued to the utmost, would affect the Titles to a large Proportion of Estates in the Country, for that Parties had been acting on the Footing of Dower upon a contrary Principle, and had supposed, that by the Creation of a Trust, the Right of Dower would be prevented from attaching. Many Persons had purchased under this Idea; and the Country would have been thrown into the utmost Confusion, if Courts of Equity had followed their general Rule with Respect to Trusts, in the Cases of Dower. But the same Objection did not apply to Tenancy by the Courtesy; for no Person would purchase an Estate subject to the Tenancy by the Courtesy, without the Concurrence of the Person in whom that Right was vested."

The Consequence of adopting the present Mode of Conveyancing, in Preference to that first mentioned, has perhaps not been sufficiently attended to, with Respect to its Influence on the Comforts of Families, and the fair Expectations of Persons engaged in Marriage; for although a Freedom of Disposition is an important Object in the Acquisition of Property, the affording to a Widow the original Provision of the Law, when the Husband has shewn no Intention to the Contrary, would be much more Beneficial to the Community than the mere Advantage to the Heir; (a Person probably unknown to his Ancestor) upon the opposite System. Considering the Reasonableness of the Provision itself on the one Hand, and the Disadvantage which arises from rendering the Right to that Provision so absolute as not to be subject to the Controul of the Owner of the Property—and the consequent Expedients leading to an absolute Deprivation of the Right, on the other—the Subject seems to be fairly worthy of legislative Attention; and the Editor submits that it would be very Beneficial to provide, that in all Cases it should be lawful for any Person seised of an Estate in Fee, to dispose thereof; and that the same should be subject to all his Debts and Charges, free from any Claim of Dower, with the Exception of Estates to which the Title shall arise by Descent or Devise, or Marriage Settlement during the Coverture; and by way of Compensation, to admit Widows to their Dower of Trust Estates, subject to any Dispositions of the Husband. Perhaps it might not be an injudicious Addition (although the Observation does not arise immediately out of the Subject which is properly before me) to extend the Benefit of Dower and Courtesy to the Cases of Freehold Leases; and to dispense with the Necessity of having Issue as a Condition for Tenancy by the Courtesy.

The Power of a Party being only Tenant for Life by a wrongful Conveyance, such is a Fine or Feoffment to acquire an absolute Title to the Inheritance to the Prejudice of those who may be evidently entitled to ulterior Intents, is certainly no very desirable Ingredient of our legal System: and in all Cases, is the mere Result of a Deficiency of Style in framing the Instruments under which the Estate is derived: this Power does not exist with

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'most Part made by such Persons as be visited with Sickness, in their 'extreme Agonies and Pains, or at such Time as they have scantly 'had any good Memory or Remembrance; at which Times they being 'provoked by greedy and covetous Persons lying in Wait about them, 'do many Times dispose indiscreetly and unadvisedly their Lands and 'Inheritances; by Reason whereof, and by Occasion of which fraudulent Feoffments, Fines, Recoveries and other like Assurances to 'Uses, Confidences and Trusts, divers and many Heirs have been 'unjustly at sundry Times disherited, the Lords have lost their Wards, 'Marriages, Reliefs, Harriots, Escheats, Aids *pur fair filz chivalier,* '*& pur file marier*, and scantly any Person can be certainly assured of 'any Lands by them purchased, nor know surely against whom they 'shall use their Actions or Executions for their Rights, Titles, and 'Duties; also Men married have lost their Tenances by the Curtesy, 'Women their Dowers, manifest Perjuries by Trial of such secret 'Wills and Uses have been committed; the King's Highness hath 'lost the Profits and Advantages of the Lands of Persons attainted, 'and of the Lands craftily put in Feoffments to the Uses of Aliens 'born, and also the Profits of Waste for a Year and a Day of Lands 'of Felons attainted, and the Lords their Escheats thereof; and 'many other Inconveniences have happened, and daily do increase 'among the King's Subjects, to their great Trouble and Inquietness, 'and to the utter Subversion of the ancient Common Laws of this 'Realm; for the Extirping and Extinguishment of all such subtle

1 Roll, 260, 327, 385.
2 Roll, 170, 335, 336.
Poph. 21, 70.

Respect to Trust or Copyhold Estates, and I apprehend that it would be an Improvement in the Law to dispense with the Services of the Parties intrusted with the imaginary Duties of "making Entries, and bringing Actions as Occasion shall require," for the Purpose of supporting contingent Remainders; by a general Provision, that no Estate or Interest in Remainder should be affected or prejudiced by any Fine, Feoffment, or other wrongful Act of Tenant for Life, or by any Union of the Tenancy for Life with the ulterior Reversion. This Principle was acted upon by Statute 10 & 11 W. 3. c. 16. to enable posthumous Children to take Estates as if born in their Parents' Life Time; (ante Class I. No. 22) previous to which a Limitation to Trustees was necessary for the Preservation of an intermediate Freehold; and it is impossible to suppose that any Prejudice can arise from an Alteration of the Law which will have the Effect of preventing the Intentions of the Party from whom the Property is derived, being defeated in Consequence of the Omission of a mere technical Expression. Besides the general Mischief already alluded to, against which such a Provision would afford a Remedy, the Mischief of the Power of Devise by Tenant in Remainder being defeated by a Fine of the preceding Tenant for Life, would be effectually obviated.

The Legislature has, in the Statutes forming one of the preceding Classes, (Vide Class VI.) applied a Remedy to the Inconvenience arising from Estates in Trust being vested in Infants or Lunatics. It would be a very beneficial Extension of the same Principle to provide for the Case of the Absence or Uncertainty of the Person in whom such Trust Estates were vested, by enabling Courts of Equity, upon Petition to authorize a proper Officer to execute a Conveyance of the Trust Estate. This Subject might require distinct Consideration as applied to the Cases of mere Trusts as Instruments of Conveyancing, and Trusts attended with actual Confidence in the Individuals; but I apprehend, that considerable Benefit, unaccompanied with any Inconvenience, would arise from making the Provision general

The Principle of such a Provision has been already applied by the Legislature to the Case of personal Estates, by Stat. 36 Geo. III. c. 90, with Respect to Money in the Funds: and I find that by the Irish Statute 28 Geo. III. c. 35. Provisions of the Nature here suggested, have been actually adopted. 2 Gabbett, 358.

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'practised Feoffments, Fines, Recoveries, Abuses and Errors heretofore used and accustomed in this Realm, to the Subversion of the good and ancient Laws of the same, and to the Intent that the King's Highness, or any other his Subjects of this Realm, shall not in any wise hereafter by any Means or Inventions be deceived, damaged or hurt, by Reason of such Trusts, Uses or Confidences:' It may please the King's most Royal Majesty, that it may be enacted by his Highness, by the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, in Manner and Form following; that is to say, That where any Person or Persons (2) stand or be seized, (3) or at any Time hereafter shall happen to be seized, of and in any Honours, Castles, Manors, Lands, Tenements, Rents, Services, Reversions, Remainders or other Hereditaments, to the Use, Confidence or Trust of any other Person or Persons, or of any Body Politick, (4) by Reason of any Bargain, Sale, Feoffment, Fine, Recovery, Covenant, Contract, Agreement, Will or otherwise, by any manner Means whatsoever it be; that in every such Case, all and every such Person and Persons, and Bodies Politick, that have or hereafter shall have any such Use, Confidence or Trust in Fee-simple, Fee-tail, for Term of Life or for Years, or otherwise, or any Use, Confidence or Trust, in Remainder or Reverter, shall from henceforth stand and be seized, deemed and adjudged in lawful Seisin, Estate and Possession of and in the same Honours, Castles, Manors, Lands, Tenements, Rents, Services, Reversions, Remainders and Hereditaments, with their Appurtenances, to all Intents, Constructions and Purposes in the Law, of and in such like Estates as they had or shall have in Use, Trust or Confidence of or in the same; and that the Estate, Title, Right and Possession that was in such Person or Persons that were, or hereafter shall be seized of any Lands, Tenements or Hereditaments, to the Use, Confidence or Trust of any such Person or Persons, or of any Body Politick, be from henceforth clearly deemed and adjudged to be in him or them that have, or hereafter shall have such Use, Confidence or Trust, after such Quality, Manner, Form and Condition as they had before, in or to the Use, Confidence or Trust that was in them.

The Possession of Lands shall be in him or them that have the Use.
1 Leon. 258.
2 Leon. 6, 15.
3 Cr. 903.
1 Co. 162.
8 Co. 94.
11 Co. 24.
Cro. 1. 46, pl. 2
Cro. Jac. 6, 401, 403.
Cro. Car 44, 218.
1 Anders. 337.
Bro Feoffm pl. Uses 55, 56, 58.
Plow. f. 111, 340.
Moor, 859, pl. 1180.
Dyer, f. 115, 235, 274, 309, 340, 349, 362, 369.
Co. 1 Inst 237, a. 272, a 287, a.
Co. Lit. 187, b.

(2) The King or Queen Regent cannot be seised to a Use—Gilb [6] 11; nor the Queen Consort.—Bac. Uses 59. And a Corporation cannot take by Conveyance to the Use of another; but it seems that they may pass their own Estates by Conveyances operating only by the Statute of Uses—as by the common Conveyance of Lease by way of Bargain and Sale, and Release; and that the usual Precautions of conveying by Lease at Common Law, and actual Entry, as the Foundation of a Release, or by Feoffment, are not necessary. See Sug. Note Gilb. [5].

(3) By Force of this Word, which only extends to Freehold Interests, the Statute does not affect Assignments of Terms of Years, although a Term may be newly created by Conveyance operating under the Statute, as is evident from the common Case of a Bargain and Sale for a Year. See Gilb [79]. The Purpose of vesting a Term of Years in a Person already possessed thereof with others as Joint-Tenants, (as in the usual Case of a Change of Trustees for Public Institutions) can only be accomplished by a previous Assignment to a third Person, and from such Person to the original Assignor in Conjunction with others. This double Transfer only occasions the Expence of an additional and very short Deed, for the Re-transfer is invariably made by Indorsement.—Sug. Gilb. [78] 150.

(4) Money given by the Governors of a Hospital, is a good Consideration to raise a Use to them in their public Capacity; and though a Body Politic cannot be seised to a Use, yet upon a Bargain and Sale to them, a Trust may be limited that they shall dispose of the Rents and Profits of the same amongst the Poor of the said Corporation. Gilb. [286].

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Assurance made of divers to the Use of one or some of them.
13 Co. 55, 56
2 Roll, 246.

II. And be it further enacted by the Authority aforesaid, That where divers and many Persons be, or hereafter shall happen to be, jointly seised of and in any Lands, Tenements, Rents, Reversions, Remainders or other Hereditaments, to the Use, Confidence or Trust of any of them that be so jointly seised, that in every such Case that those Person or Persons which have or hereafter shall have any such Use, Confidence or Trust in any such Lands, Tenements, Rents, Reversions, Remainders or Hereditaments, shall from henceforth have, and be deemed and adjudged to have only to him or them that have, or hereafter shall have any such Use, Confidence or Trust, such Estate, Possession and Seisin, of and in the same Lands, Tenements, Rents, Reversions, Remainders and other Hereditaments, in like Nature, Manner, Form, Condition and Course, as he or they had before in the Use, Confidence or Trust of the same Lands, Tenements or Hereditaments; saving and reserving to all and singular Persons, and Bodies Politick, their Heirs and Successors, other than those Person or Persons which be seised, or hereafter shall be seised, of any Lands, Tenements or Hereditaments, to any Use, Confidence or Trust, all such Right, Title, Entry, Interest, Possession, Rents and Action, as they or any of them had, or might have had before the making of this Act,

[illegible] the Cest[illegible] Us[illegible]
2 Lev. 126, 127.
1 Salk. 241.
1 Anders. 84.
2 Roll. 105, 145.
7 Co. 39.
Dyer, f. 340.
Moor, 196, pl. 345.
Jones, 179.

III. And also saving to all and singular those Persons, and to their Heirs, which be, or hereafter shall be seised to any Use, all such former Right, Title, Entry, Interest, Possession, Rents, Customs, Services and Action, as they or any of them might have had to his or their own proper Use, in or to any Manors, Lands, Tenements, Rents or Hereditaments, whereof they be, or hereafter shall be seized to any other Use, as if this present Act had never been had nor made; any Thing contained in this Act to the contrary notwithstanding (5)

'IV. And where also divers Persons stand and be seised of and 'in any Lands, Tenements or Hereditaments, in Fee-simple or otherwise, to the Use and Intent that some other Person or Persons shall have and perceive yearly to them, and to his or their Heirs, one 'annual Rent of x. li or more or less, out of the same Lands and 'Tenements, and some other Person one other annual Rent, to him 'and his Assigns for Term of Life or Years, or for some other special 'Time, according to such Intent and Use as hath been heretofore 'declared, limited and made thereof:'

[illegible] the U[illegible] [illegible]red to [illegible] Rent [illegible] out [illegible] some

1 Anders. 275, 338.

V. Be it therefore enacted by the Authority aforesaid, That in every such Case the same Persons, their Heirs and Assigns, that have such Use and Interest, to have and perceive any such annual Rents out of any Lands, Tenements or Hereditaments, that they and every of them, their Heirs and Assigns, be adjudged and deemed to be in Possession and Seisin of the same Rent, of and in such like Estate as they had in the Title, Interest or Use of the said Rent or Profit, and as if a sufficient Grant, or other lawful Conveyance had been made and executed to them, by such as were or shall be seized to the Use or Intent of any such Rent to be had, made or paid, according to the very Trust and Intent thereof; and that all and every such Person and Persons as have, or hereafter shall have, any Title, Use and Interest

(5) By Virtue of this Saving, "If a Termor for Years be made a Feoffee to Uses, his Term is saved by the Statute, and not merged; and it is not Material that the Termor holds the Lease in Trust. See Cheyney's Case, Mo. 196. 2 And. 192. And where a Termor for Years was made a Tenant to the Præcipe, it was held, that although the Freehold vested in him drowned the Term until the Recovery was sufficient; yet when the Recovery was perfected, the Term should revive. Ferrers v. Fermor, 2 Rol. Rep. 245. Cro Jac. 643. Terries Case, 1 Ventr. 200, cited. The same Rule must, it is conceived, prevail, even when the Conveyance is by Lease and Release. Sug. n. Gilb. [89].

in or to any such Rent or Profit, shall lawfully distrain for Non-payment of the said Rent, and in their own Names make Avowries, or by their Bailiffs or Servants make Conisances and Justifications, and have all other Suits, Entries and Remedies for such Rents, as if the same Rents had been actually and really granted to them, with sufficient Clauses of Distress, Re-entry, or otherwise, according to such Conditions, Pains, or other Things limited and appointed, upon the Trust and Intent for Payment or Surety of such Rent. (6)

No 3. 27 H. VIII. c. 10.

A Woman shall not have both Jointure & Dower of her Husband's Lands. Co. l. 4, f. 1, &c. Dyer, f. 61, 97, 228, 248, 266, 317, 510. Co. Inst. 36 b.

VI. And be it further enacted by the Authority aforesaid, That whereas divers Persons have purchased, or have Estate made and conveyed of and in divers Lands, Tenements and Hereditaments unto them and to their Wives, and to the Heirs of the Husband, or to the Husband and to the Wife, and to the Heirs of their two Bodies begotten, or to the Heirs of one of their Bodies begotten, or to the Husband and to the Wife for Term of their Lives, or for Term of Life of the said Wife; or where any such Estate or Purchase of any Lands, Tenements, or Hereditaments, hath been or hereafter shall be made to any Husband and to his Wife, in Manner and Form expressed, or to any other Person or Persons, and to their Heirs and Assigns, to the Use and Behoof of the said Husband and Wife, or to the Use of the Wife, as is before rehearsed, for the Jointer of the Wife; that then in every such Case, every Woman married, having such Jointer made or hereafter to be made, shall not claim, nor have Title to have any Dower of the Residue of the Lands, Tenements or Hereditaments, that at any Time were her said Husband's, by whom she hath any such Jointer, nor shall demand nor claim her Dower of and against them that have the Lands and Inheritance of her said said Husband; but if she have no such Jointer, then she shall be admitted and enabled to pursue, have and demand her Dower by Writ of Dower, after the due Course and Order of the Common Laws

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(6) The following Note upon this Subject is given by Mr. Sugden, in Gilbert's Law of Uses and Trusts, 193, [86.]—"The Statute has two Provisions for the Execution of Rents:—the first, for Rents *in esse* limited to Uses, which are executed in the same Manner as Uses of corporeal Hereditaments; —the other, for Rents limited in Use out of the Seisin in the Land of some other Person, e. g. where any Person stands seised of any Lands, to the Use that some other Person may receive a Rent thereout, which the Statute executes in the same Manner as if a sufficient Grant had been made to him by the Person seised to the Use, and gives the *Cestui que Use* a Power of Distress; see 1 Mod. 223; 2 Mod. 138. This Clause, it has been held, relates as well to Rents limited since the Statute, as to Rents then *in esse*, Dy. 362, b, pl. 21; Danby v. Conyers, 1 And. 51; Bendl. 315, pl. 299; therefore if Lands be conveyed to A and his Heirs, to the Use that B and his Heirs may receive a given Rent, the Use will be executed by the Statute; but any ulterior Use would be void. Where a Rent is intended to be limited to Uses in strict Settlement, it is desirable to first grant it to a Stranger in Fee, to the Intent that he may re-grant it to the intended Uses; see Mr. Butler's n. to Co. Litt. 271, b; which avoids any Question, whether distinct Rents are granted; see Whitfield v. Fausset, 1 Ves. 387: or it may be granted to a Stranger to the Uses at once; see Boscawen v. Cook, 1 Mod. 223; Cook v. Herle, 2 Mod. 138. S. C.; although if limited by Way of Use to the Stranger, the ulterior intended Uses would be mere Trusts; see Chaplin v. Chaplin, 3 P. Wms. 229.

"The Meaning of the Passage in the Text is, that a Rent cannot be granted by a Bargain and Sale; that is, that a mere Bargain and Sale of a new Rent would be void; but upon a Conveyance of the Estate itself by Bargain and Sale, a Rent may be limited out of the Estate created; for although a Use had only passed by the Common Law, yet now by the Statute, the Use and Possession pass together, and so it amounts to a Grant of the Land itself. This was adjudged in Weeks v. Tillard, Co. Litt. 144, a; Cro. Eliz 595; and see Puttenham's Case, 1 And. 18; and the Reservation, as if out of the

No 3. 27 H. VIII. c. 10. of this Realm; this Act, or any Law or Provision made to the contrary thereof notwithstanding. (7)

A Woman shall be endowed whose Jointure is recovered. Moor, 717.

VII. Provided alway, That if any such Woman be lawfully expulsed or evicted from her said Jointer, or from any Part thereof, without any Fraud or Covin, by lawful Entry, Action, or by Discontinuance of her Husband, then every such Woman shall be endowed of as much of the Residue of her Husband's Tenements or Hereditaments, whereof she was before dowable, as the same Lands and Tenements so evicted and expulsed shall amount or extend unto

Women heretofore married.

VIII. Provided also, That this Act, nor any Thing therein contained or expressed, extend or be in any wise hurtful or prejudicial to any Woman or Women heretofore being married, of, for or concerning such Right, Title, Use, Interest or Possession, as they or any of them have, claim or pretend to have for her or their Jointer or

Estate executed by the Statute, will not be deemed a Use upon a Use. Cromwell's Case, post 200; Cholmley's Case, 2 Rep. 54, a; 2 Inst. 673; Cro. Eliz. 595. This Construction appears to have depended on that Clause in the Act, which executes Rents where any Person is seised of Land, to the Intent that another may have a Rent; and on the same Principle in the Case of Revitt v. Godson, 1 Jo. 179, where there was a Covenant to stand seised, in Consideration of natural Love, of certain Lands, to the Use of the Covenantor for Life, with Remainders over, *and to the Intent that his Son should have a Rent during his Father's Life*, it was decided by Dodridge, Jones, and Whitlock, that by the Clause in 27 H. 8, *where any one was seised to the Intent that another should have a Rent*, the Son in that Case had a good Rent as well upon a Covenant as a Feoffment, so if a Bargain and Sale was rendering Rent, that they said was within the Clause, for which they referred to Cromwell's Case. At first Sight these Cases appear to establish that a Rent may be newly granted by a Bargain and Sale, or Covenant to stand seised; but they merely decided that a Rent may be limited or reserved *out of an Estate actually raised by either of those Conveyances*, although they do not operate by Transmutation of Possession.

A new Rent may, like the Estate itself, be limited to commence *in futuro* within the Line of Perpetuity, because it hath no Existence until that Time, and so there is no Suspension of any Freehold; but it is otherwise where an old Rent is granted for Life, or in Fee, to commence *in futuro*, for there the Grant is void, because there is a Rent *in esse*, and so the Freehold of that Rent will be suspended, and therefore such Grant is void; Osmere v. Sheate, Carth. 307; and see Rex v. Kemp, 2 Salk. 465, 4th Resol.

It may still be observed, that although a mere Tenancy in Tail in Land be created, and the Reversion be left in the Donor, yet a Recovery by the Tenant in Tail will bar as well the Estate Tail as the Reversion over; but a bare Limitation of a *Rent* upon its Creation to one in Tail, *without a Remainder over in Fee*, will not enable the Donee to acquire more than a base Fee in the Rent, determinable upon Failure of the Issue; see Smith v. Farnaby, 2 Keb. 29, 55, 84; Weeks v. Peach, 2 Lutw. 1218; 2 Salk. 557; Chaplin v. Chaplin, 3 P. Wms. 229.

For the Nature of an Estate in a Rent in Fee, with Powers of Distress and Entry, see Havergill v. Hare, Cro. Jac. 510."

(7) For the Circumstances necessary to constitute a Jointure amounting to a legal Bar of Dower, see Co. Lit. 36, 37—2 Bl. Com. 138. In Equity, "any Provision, however precarious, and whether secured out of Reality or Personalty, which an Adult, previously to Marriage, accepts in Lieu of Dower, Jordan v. Savage, Bac. Abr. Jointure, (B) 5; Charles v. Andrews, 9 Mod. 152; Williams v. Chitty, 3 Ves. Jun. 545; 4 Bro. C. C. 513. Infants are within the Statute, and may be barred of Dower by a legal Jointure, Drury v. Drury, 5 Bro. P. C. 570; 4 Bro. C. C. 506, n.; Wilmot, 177. By analogy to this Rule, they may also be barred by an equitable Jointure; but they will not, like Adults, be bound by a precarious Provision. It must, to be effectual, although an equitable Provision, be as certain a Provision as is required to operate as a legal Bar; Caruthers v. Carruthers, 4 Bro. C. C. 500; Smith v. Smith, 5 Ves. Jun. 189."—Sug. Gilb. 330.

Dower, of, in or to any Manors, Lands, Tenements, or other Hereditaments of any of their late Husbands, being now dead or deceased; any Thing contained in this Act to the contrary notwithstanding.

No. 3. 27 H. VIII c. 10.

IX. Provided also, That if any Wife have, or hereafter shall have any Manors, Lands, Tenements or Hereditaments unto her given and assured after Marriage, for Term of her Life, or otherwise in Jointer, except the same Assurance be to her made by Act of Parliament, and the said Wife after that fortune to outlive her said Husband, in whose Time the said Jointer was made or assured unto her, that then the same Wife so overliving shall and may at her Liberty, after the Death of her said Husband, refuse to have and take the Lands and Tenements so to her given, appointed or assured during the Coverture, for Term of her Life, or otherwise in Jointer, except the same Assurance be to her made by Act of Parliament, as is aforesaid, and thereupon to have, ask, demand and take her Dower by Writ of Dower or otherwise, according to the Common Law, of and in all such Lands, Tenements and Hereditaments as her Husband was and stood seized of any State of Inheritance at any Time during the Coverture; any Thing contained in this Act to the contrary thereof notwithstanding.

A Jointure after Marriage may be taken or refused by the Wife. Co. l. 3. f. 27. Moor, 721.

X. Provided also, That this present Act, or any Thing herein contained, extend nor be at any Time hereafter interpreted, expounded or taken, to extinct, release, discharge or suspend any Statute, Recognizances or other Bond, by the Execution of any Estate, of or in any Lands, Tenements or Hereditaments, by the Authority of this Act, to any Person or Persons, or Bodies Politick; any Thing contained in this Act to the contrary thereof notwithstanding.

This Statute shall extinguish no Statute of Recognizance, &c.

'XI. And forasmuch as great Ambiguities and Doubts may 'arise of the Validity and Invalidity of Wills heretofore made of any 'Lands, Tenements and Hereditaments, to the great Trouble of the 'King's Subjects;' the King's most Royal Majesty minding the Tranquillity and Rest of his loving Subjects, of his most excellent and accustomed Goodness is pleased and contented that it be enacted by the Authority of this present Parliament, That all Manner true and just Wills and Testaments heretofore made by any Person or Persons deceased, or that shall decease before the first Day of *May*, that shall be in the Year of our Lord God 1536, of any Lands, Tenements or other Hereditament, shall be taken and accepted good and effectual in the Law, after such Fashion, Manner and Form as they were commonly taken and used at any Time within forty Years next afore the making of this Act; any Thing contained in this Act, or in the Preamble thereof, or any Opinion of the Common Law to the contrary thereof notwithstanding.

Wills made before the Statute, or shortly after, how they shall be taken

XII. Provided always, That the King's Highness shall not have, demand or take any Advantage or Profit, for, or by Occasion of executing any Estate, only by Authority of this Act, to any Person or Persons, or Bodies Politick, which now have, or on this Side the said first Day of *May*, which shall be in the Year of our Lord God 1536, shall have any Use or Uses, Trusts or Confidences in any Manors, Lands, Tenements or Hereditaments holden of the King's Highness, by Reason of primer Seisin, Livery, *Ouster le main*, Fine for Alienation, Relief or Harriot; but that Fines for Alienations, Reliefs and Harriots, shall be paid to the King's Highness, and also Liveries and *Oustre le mains* shall be sued for Uses, Trusts and Confidences to be made and executed in Possession by Authority of this Act, after and from the said first Day of *May*, of Lands and Tenements, and other Hereditaments holden of the King in such like Manner and Form, to all Intents, Constructions and Purposes, as hath heretofore been used and accustomed by the Order of the Laws of this Realm.

How Fines for Alienation, Reliefs and Harriots, shall be paid to the King. 6 Co. 28.

No. 3.
27 H. VIII. c. 10.

Other Lords Fines, Reliefs and Harriots.

XIII. Provided also, That no other Person or Persons, or Bodies Politick, of whom any Lands, Tenements or Hereditaments be or hereafter shall be holden mediate or immediate, shall in wise demand or take any Fine, Relief or Harriot, for or by Occasion of the executing of any Estate by the Authority of this Act, to any Person or Persons, or Bodies Politick, before the said first Day of *May*, which shall be in the Year of our Lord God 1536.

Cestuy que use may take all such Advantages as his Feoffees might have had.

XIV. And be it enacted by Authority aforesaid, That all and singular Person and Persons, and Bodies Politick, which at any Time on this Side the first Day of *May*, which shall be in the Year of our Lord God 1536, shall have any Estate unto them executed of and in any Lands, Tenements or Hereditaments, by the Authority of this Act, shall and may have and take the same or like Advantage, Benefit, Voucher, Aid Prayer, Remedy, Commodity and Profit by Action, Entry, Condition or otherwise, to all Intents, Constructions and Purposes, as the Person or Persons seised to their Use of or in any such Lands, Tenements or Hereditaments so executed, had, should, might or ought to have had at the Time of the Execution of the Estate thereof, by the Authority of this Act, against any other Person or Persons, of or for any Waste, Disseisin, Trespass, Condition broken, or any other Offence, Cause or Thing concerning or touching the said Lands or Tenements so executed by Authority of this Act.

Actions now depending.

XV. Provided also, and be it enacted by the Authority aforesaid, That Actions now depending against any Person or Persons seised of or in any Lands, Tenements or Hereditaments, to any Use, Trust or Confidence, shall not abate ne be discharged for or by Reason of executing of any Estate thereof by Authority of this Act, before the said first Day of *May*, which shall be in the Year of our Lord God 1536; any Thing contained in this Act to the contrary notwithstanding.

Wardships, Liveries, or Ouster le main, of any now being within Age, or of full Age.

XVI. Provided also, That this Act, nor any Thing therein contained, shall not be prejudicial to the King's Highness for Wardships of Heirs now being within Age, nor for Liveries, or for *Ouster le mains*, to be sued by any Person or Persons now being within Age, or of full Age, of any Lands or Tenements unto the same Heir or Heirs now already descended; any Thing in this Act contained to the contrary notwithstanding.

Recognizances taken to the King's Use concerning Recoveries.

XVII. Provided also, and be it enacted by the Authority aforesaid, That all and singular Recognizances heretofore knowledged, taken or made to the King's Use, for or concerning any Recoveries of any Lands, Tenements or Hereditaments heretofore sued or had, by Writ or Writs of Entry upon Dissesin *in le post*, shall from henceforth be utterly void and of none Effect, to all Intents, Constructions and Purposes.

Estates of Lands executed to Persons born in Wales.

XVIII. Provided also, That this Act, nor any Thing therein contained, be in any wise prejudicial or hurtful to any Person or Persons born in *Wales*, or the Marches of the same, which shall have any Estate to them executed by Authority of this Act, in any Lands, Tenements, or other Hereditaments within this Realm, whereof any other Person or Persons now stand or be seised to the Use of any such Person or Persons born in *Wales* or the Marches of the same; but that the same Person or Persons born in *Wales*, or the Marches of the same, shall or may lawfully have, retain and keep the same Lands, Tenements or other Hereditaments, whereof Estate shall be so unto them executed by the Authority of this Act, according to the Tenor of the same; any Thing in this Act contained, or any other Act or Provision heretofore had or made to the contrary notwithstanding.

No. 4.

27 Henry VIII. c. 16.—For Inrolment of Bargains and Sales.*

27 H. VIII c. 16.

No Land shall pass by Bargain and Sale, unless it be by Writing indented, sealed and inrolled.

1 Bulst. 163. 2 Inst. 671. Hob. 136, 222. 1 Roll, 424. 2 Roll, 105, 218. 2 Co 36 4 Co. 70. 7 Co 40.

The Fee for Inrolment in the County.

8 Co. 93. Cro. El. 160, 917. Cro. Car 110, 129, 218. 1 Salk. 380 1 Ander, 285.

Extended to Counties Palatine by 5 El. c. 26.

BE it enacted by the Authority of this present Parliament, That from the last Day of *July*, which shall be in the Year of our Lord God 1536, no Manors, Lands, Tenements or other Hereditaments, shall pass, alter or change from one to another, whereby any Estate of Inheritance or Freehold shall be made or take Effect in any Person or Persons, or any Use thereof to be made, by Reason only of any Bargain and Sale thereof, except the same Bargain and Sale be made by Writing indented, sealed and inrolled in one of the King's Courts of Record at *Westminster*, or else within the same County or Counties where the same Manors, Lands or Tenements, so bargained and sold, lie or be, before the *Custos Rotulorum* and two Justices of the Peace, and the Clerk of the Peace of the same County or Counties, or two of them at the least, whereof the Clerk of the Peace to be one; and the same Inrollment to be had and made within six Months next after the Date of the same Writings indented; the same *Custos Rotulorum*, or Justices of the Peace and Clerk, taking for the Inrollment of every such Writing indented before them, where the Land comprised in the same Writing exceeds not the yearly Value of forty Shillings, *ii. s.* that is to say, *xij. d.* to the Justices, and *xij. d.* to the Clerk; and for the Inrollment of every such Writing indented before them, wherein the Land comprized exceeds the Sum of *xl. s.* in the yearly Value *v s.* that is to say, *ii s. vi. d.* to the said Justices, and *ii. s. vi d.* to the said Clerk for the inrolling of the same: And that the Clerk of the Peace for the Time being, within every such County, shall sufficiently inroll and ingross in Parchment the same Deeds or Writings indented as is aforesaid; and the Rolls thereof at the End of every Year shall deliver unto the said *Custos Rotulorum* of the same County for the Time being, there to remain in the Custody of the said *Custos Rotulorum* for the Time being, amongst other Records of every of the same Counties where any such Inrollment shall be so made, to the Intent that every Party that hath to do therewith, may resort and see the Effect and Tenor of every such Writing so inrolled.

* For the general Doctrines established with Regard to this Act, I shall only refer to the Authorities mentioned in the preliminary Note to the preceding Number. But think it proper more particularly to mention the Opinion maintained by Mr. Fearne, in his Reading on the present Statute—inserted in his posthumous Works—that a Rent or Reversion, which would not pass at Common Law, by mere Grant without Attornment, cannot now pass by Grant, although the Necessity of Attornment is taken away by Stat. 4 Anne, c 16, [ante Class I. No. 23,]—and that it is a Conveyance of such Interest as must be made either by Lease and Release, or by Bargain and Sale inrolled. This Opinion appears to be evidently erroneous, and is controverted by Mr. Sanders, in his Treatise on Uses, vol 2, p. 39, and by Mr. Sugden, in his Note to Gilbert, [105] 226. The following Summary of the Question is extracted from the Note just mentioned. "The true State of the Law seems to be simply this: the Statute of Inrolments only extended to proper Bargains and Sales—a Grant of a Reversion was a Common Law Conveyance, and not within the Purview of it; because the Necessity of Attornment, which then existed, was equipollent to Livery of Seisin, where the Estate was in Possession. The Statute of Anne took away the Necessity of Attornment to a Grant of a Reversion, but did not affect the Operation of the Grant itself, which still, as formerly, will, as a Common Law Conveyance, transfer the Reversion, and will now be sufficient, without any Attournment of the Tenants.

No. 4. 27 H VIII. c 16 Towns Corporate, &c may inroll Dyer, f. 226.

II. Provided always, That this Act, nor any Thing therein contained, extend to any Manor, Lands, Tenements or Hereditaments, lying or being within any City, Borough or Town Corporate within the Realm, wherein the Mayors, Recorders, Chamberlains, Bailiffs or other Officer or Officers have Authority, or have lawfully used to inroll any Evidences, Deeds or other Writings within their Precinct or Limits; any Thing in this Act contained to the contrary notwithstanding.

No. 5.

5 Elizabeth, c. 26.—An Act for the Inrolment of Indentures of Bargain and Sale in the Queen's Majesty's Courts of the Counties of *Lancaster*, *Chester*, and Bishoprick of *Durham*, shall be good in Law.

5 Eliz. c. 26. 27 H. 8, c. 16.

'WHERE in the Parliament holden upon Prorogation at *Westminster* the fourth Day of *February* in the xxvij Year of the 'Reign of our late Sovereign Lord of most famous Memory King 'Henry the Eighth, and there continued and kept till the xiiij. Day 'of *April* then next ensuing, it was enacted, That from the last Day 'of *July* which was in the Year of our Lord God one thousand five 'hundred thirty-six, no Manors, Lands, Tenements or other Hereditaments should pass, alter or change from one to another, whereby 'any Estate of Inheritance or Freehold should be made or take Effect 'in any Person or Persons, or any Use thereof to be made, by Reason 'only of any Bargain and Sale thereof, except the same Bargain and 'Sale were made by Writing indented, sealed, and inrolled in one of 'the King's Courts of Record at *Westminster*, or else within the same 'County or Counties where the same Manors, Lands or Tenements so 'bargained and sold, lie or be, before the *Custos Rotulorum* and two 'Justices of the Peace, and the Clerk of the Peace of the same 'County or Counties, or two of them at the least, (whereof the Clerk 'of the Peace to be one) and the same Inrollments to be had and 'made within six Months next after the Date of the said Writing 'indented; as by the same Act of Parliament among other Things 'therein contained more at large it doth appear.

'II And forasmuch as the same Act of Parliament doth not extend to make any Inrollments of any Deeds indented of such Bargains and Sales made of any Manors, Lands, Tenements or Hereditaments, lying and being within the Counties Palatine of *Lancaster*, *Chester*, and the Bishoprick of *Durham*, to be good or of any 'Force in the Law, in any the Queen's Courts of Record within the 'said Counties Palatine of *Lancaster*, *Chester*, or the Bishoprick of '*Durham*'

Inrolments in Lancaster, Chester, Durham.

III. Be it now therefore enacted by the Queen our Sovereign Lady, with the Assent of the Lords Spiritual and Temporal of this present Parliament assembled, and by the Authority of the same, That from the Feast of *Easter* next coming, all Inrollments of such Writings indented, (*viz.* as be mentioned 27 H 8. c. 16) of any Bargain and Sale, after the said Feast of *Easter* to be made of any Manors, Lands, Tenements or other Hereditaments, &c. lying or being in the Counties of *Lancaster*, *Chester*, and Bishoprick of *Durham*, being made and inrolled within six Months next after the Date of any such Writings, indented in the Queen's Court of Chancery at *Lancaster*, or before the Queen's Justice or Justices of Assizes at

Lancaster aforesaid, concerning any Manors, Lands, Tenements or Hereditaments within the said County of *Lancaster*; or in the Queen's Court of the Exchequer at *Chester*, or before the Queen's Justice or Justices of Assizes at *Chester* aforesaid, concerning any Manors, Lands, Tenements or Hereditaments within the said County of *Chester*, or in the Court of Chancery at *Duresme*, or before the Justice or Justices of Assizes at *Duresme* aforesaid, concerning any Manors, Lands, Tenements or Hereditaments within the said County of the Bishoprick of *Duresme*, shall be accepted, reputed, deemed and taken by the Authority of this Act, to be as good and available in Law, to all Intents, Constructions and Purposes, as if the same Writings indented had been made and inrolled in any of the Queen's Courts at *Westminster*; any Thing contained in the said former Act to the contrary in any wise notwithstanding. No. 5. 5 Eliz. c. 26.

IV. Provided always, That this Act nor any Thing therein contained extend to any Manors, Lands, Tenements or Hereditaments lying and being within any City, Borough or Town Corporate within any of the said Counties, wherein the Mayors, Recorders, Chamberlains, Bailiffs, or other Officer or Officers have Authority, and have lawfully used, to inrol any Evidences, Deeds or other Writing, within their Precinct or Limits; any Thing in this Act contained to the contained to the contrary notwithstanding. Towns Corporate.

No. 6.

54 George III. c. 168.—An Act to amend the Law respecting the Attestation of Instruments of Appointment and Revocation, made in Exercise of certain Powers in Deeds, Wills and other Instruments.*

[30th *July* 1814.]

WHEREAS Powers, Authorities and Trusts are in many Cases required to be executed by Deeds or Instruments signed by or under the Hands of the Persons executing the same, or Persons consenting to or directing Acts respecting such Powers, Authorities and Trusts are frequently required to signify such Consent or Direction by Deeds or Instruments signed by them, or under their Hands, and it has been the ordinary Practice, in the Memorandum of Attestation of Deeds, to express the Facts of Sealing and Delivery only: And whereas Doubts have arisen respecting the Validity of Deeds or Instruments so attested and requiring Signature, although the same may have been actually signed by the Persons whose Signature is required thereto, and the Titles of many Purchasers, and of other Persons claiming under such Instruments may be defective for want of the Insertion of the Word "Signed," or some Word to that Effect, in the Memorandum of Attestation thereof: And whereas it is expedient that the Titles of Purchasers and other Persons should not be disturbed, merely on account of the Omission to express the Fact of Signature in the Memorandum of Attestation of any such Deed or other Instrument already made: May it therefore 54 G. III. c.

* This Act was occasioned by the Decisions in Wright v. Wakeford, 4 Taunt. 213. Doe v. Peach, 2 M. & S. 576, which were contrary to the general Understanding and Opinion of Conveyances. It is to be observed, that the Operation of the Act is only retrospective. See some important Observations upon the Subject, in a Letter to Sir Samuel Romilly, by Mr. Sugden, and which are incorporated in the second Edition of his Treatise on the Law of Powers, Chap. 5, Sec. 3, p. 231.

No 6.
51 G. III. c. 168.

please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That every Deed or other Instrument, already made with the Intention to exercise any Power, Authority or Trust, or to signify the Consent or Direction of any Person whose Consent or Direction may be necessary to be so signified, shall (if duly signed and executed and in other Respects duly attested) be from the Date thereof, and so as to establish derivative Titles, if any, of the same Validity and Effect, and no other, at Law and in Equity, and proveable in like Manner, as if a Memorandum of Attestation of Signature, or being under Hand, had been subscribed by the Witness or Witnesses thereto; and the Attestation of the Witness or Witnesses thereto, expressing the Fact of Sealing, or of Sealing and Delivery, without expressing the Fact of Signing or any other Form of Attestation, shall not exclude the Proof or the Presumption of Signature.

Deeds, &c. executed without Memorandum of Attestation, deemed valid.

II. And be it enacted, That this Act shall extend and be construed to extend to all Deeds and other Instruments already made in Exercise of Powers, Authorities and Trusts, of Sale, Exchange, Partition, Selection, Nomination, Discretion, Leasing, Jointuring, raising Portions, and other Charges, and for appointing new Trustees, and other Powers, Authorities and Trusts whatsoever, or made for evidencing Assent, Consent, Request, Direction, or any other like Circumstance in Reference to the Execution of any such Powers, Authorities or Trusts.

To what Deeds Act to extend.

III. Provided always, and be it further enacted, That this Act shall not extend nor be construed to extend, to revive or give Effect to any Appointment, Revocation or other Assurance heretofore made, as far as the same has been avoided by Entry or Claim, or by Suit at Law or in Equity, or by any other legal or equitable Means whatsoever; nor shall this Act affect or prejudice any Suit at Law or in Equity, now depending, for avoiding any Deed or other Instrument of Appointment, Revocation or Assurance.

Act not to have retrospective Operation, nor affect any existing Suit at Law, &c.

IV. Provided always, and be it further enacted, That if any Person who has made any such Entry or Claim, or who has brought any such Suit, or has defended any Suit, for the Purpose of avoiding any such Appointment, Revocation or other Assurance, should release the Benefit of the same Entry, Claim, Suit or Defence, within Six Calendar Months next after the passing of this Act, then such Entry or Claim, or Suit or Defence, shall not prejudice or avoid any such Appointment, Revocation or other Assurance, but every such Appointment, Revocation or other Assurance shall be and remain in Force under this Act as if no such Entry or Claim had been made, or Suit brought or defended.

Appointments, &c. not affected

V. Provided always, and be it further enacted, That nothing in this Act contained shall extend, or be construed to extend, to affect any Question respecting any Instrument not within the Provisions of this Act, and which may want any Formality in the Attestation of any Witness or Witnesses thereto, but such Instrument shall have the same Force and Effect as it might have had if this Act had not been made; any Thing in this Act contained notwithstanding.

No Instrument, unless within Provisions of Act, affected.

Part II. Class X.

FINES AND RECOVERIES.

No. 1.

18 Edward I. St. 4, (*Modus levandi* Fines.)—The Manner of levying of Fines: What Things be requisite to make them good, and who are bound by them.

Cotton *MS. Claudius*, D. 2.

QUANT le brief original soit lieu en presence des parties devant Justices Donques dirra un countour issint Sire Justice conge daccorder Le Justice luy dirra Que durra Sire Robt & nomera un des parties dount quant ils serrount une gent de la somme de la pecune qest donc au Roi donques dirra la Justice criez le pees & puis dirra le countour issint Qe la pees est ycele a voz congez qe William & Alice sa femme qe cy sount reconnissent le manoir de B. ove les appertenantz contenuz en le brief estre droit de R. come cel qil ad de le doun a aver & tenir a luy & ses heirs de William & Alice & a les heirs Alice come en demeigne rents seigneries countes plees purchaces gardes mariages reliefs eschetes molours Avoesouns degliseз & toute auters fraunchises & fraunks custumes a lavantdit manoir appertenantz rendant per an a Robt & A ses heirs a chief seignerages de fee services dues & custumee pur touts services. Et fait assavoir qe ordre de ley ne suffre mie qe finale accorde soit leve en la courte le Roi sauns brief

'WHEN the Writ original is 'delivered in Presence of 'the Parties before Justices, a 'Pleader shall say this, *Sir Justice, Conge, de accorder*; and 'the Justice shall say to him, '* *What saith Sir R.* and shall 'name one of the Parties. Then, 'when they be agreed of the Sum 'of Money that must be given to 'the King, then the Justice shall 'say, *Cry the Peace.* And after 'the Pleader shall say, *In so much 'as Peace is licensed thus unto 'you W. S. and A. his Wife, 'that here be, do acknowledge the 'Manor of B. with the Appurtenances contained in the Writ, 'to be the Right of our Lord the 'King, which he hath of their 'Gift, to have and to hold to him 'and his Heirs, of the said W. 'and A. and the Heirs of A. as 'in Demeans, Rents, Seigniories, Courts, Pleas, Purchases, 'Wards, Marriages, Reliefs, Escheats, Mills, Advowsons of 'Churches, and all other Franchises and free Customs to the 'said Manor belonging, paying 'yearly to R. and his Heirs, as 'chief Lords of the Fee, the Services and Customs due for all 'Services.* And it is to be noted, 'That the Order of the Law will 'not suffer a final Accord to be 'levied in the King's Court with-

18 Edw. I

2 Inst. 510.
5 Co. 39.

The Order of levying a Fine.

* Or, Who will give? Sir R.

Rast. 349.

The Form of a Fine.

What Things be requisite to make Fine good

27 Ed. 1, st. 1, c. 1.

No. 1.
18 Edw. 1. st. 4.

What Person shall be concluded by a Fine.
1 R. 3. c. 7.
4 H. 7. c. 24.
4 Co. 125.
4 Ed. 3, f. 46
15 Ed. 2, stat. of Carlisle.

'out a Writ original, and that 'must be at the least before Four 'Justices in the Bench, or in 'Eyre, and not elsewhere, and in 'Presence of the Parties named in 'the Writ, which must be of full 'Age, of good Memory, and out 'of Prison And if a Woman 'Covert be one of the Parties, 'then she must be first examined 'by Four of the said Justices; and 'if she doth not assent thereunto, 'the Fine shall not be levied. 'And the Cause wherefore such 'Solemnity ought to be done in a 'Fine, is, because a Fine is so 'high a Bar, of so great Force, 'and of so strong Nature in itself, 'that it concludeth not only such 'as be Parties and Privies thereto, 'and their Heirs, but all other 'People of the World, being of 'full Age, out of Prison, of good 'Memory, and within the Four 'Seas, the Day of the Fine levied, 'if they make not their Claim of 'their Action within a Year and 'a Day by the Country.'

original & ceo a tote le meins devant quatre Justices en Baunk ou en Eire & noun; as aillours et en presence des parties nomez en le brief qe sont de pleine age & de bone memorie et hors du prisone. Et si femme covert de Baroun soit une des parties donqe covient qele soit primerement confesse des quatre Justices avantditz Et si ele ne sent la Fine ne se lavera mye. Et la cause pur quoi tiele solempnite doit estre faite [illegible] cele fine qe fine est si haute bare & de si graunt force & de si puissaunt nature en soi qel forclos nemye soulement ceux qi sount parties & prives a la fine & lour heirs mes touz auters gentz du monde qe sount de plein age hors du prisone de bone memorie & dedeinz les quaters meers le jour de la fine leve sils ne mettrount lour Claim de lour accion sur la pie dedeinz lan & le jour.

No. 2.

27 Edward I. st. 1, c. 1, (*De Finibus levatis.*)—No Exception to a Fine that the Demandant was seised. Fines shall be openly read.

27 Edw. I. st. 1, c. 1.
2 Inst. 121.

"FORASMUCH as Fines levied in our Court ought "and do make an End all Matters, and therefore are called "*Fines* principally, where after "waging of Battail or the great "Assise in their Cases ever they "hold the last and final Place. 'And now by a certain Time 'passed, as well in the Time of 'King HENRY, of famous Memory, our Father, as in our 'Time, the Parties of such Fines 'and their Heirs, contrary to the 'Laws and Customs of our 'Realm of ancient Time used, were admitted to adnul and defeat such Fine, alledging, that 'before the Fine levied, and at "the levying thereof, and since, "the Demandants or Plaintiffs, or

QUIA fines in Curia nostra levati finem litibus debent imponere & imponunt & ideo *fines* vocantur maxime cum post duellum & magnam assisam in suo casu ultimum locum & finalem teneant & perpetuum, Jamque per aliquod tempus preteritum tam tempore clare memorie domini HENRICI regis patris nostri quam nostro, partes eorundem finium & earum partium heredes contra leges & consuetudines regni antiquitus usitatas super hujusmodi finibus evacuandis & adnullandis admittebantur proponentes quod ante finem levatum & tempore levationis ejusdem & postea petentes seu querentes aut eorum

No. 2.
27 Edw. I. st. c. 1.

antecessores de tenementis in finibus contentis aut de aliqua parte eorum semper fuerunt seisiti & sic finis hujusmodi rite levati per juratores patrie falso subornatos & maliciose procuratos multotiens evacuabantur & adnullabantur minus juste volentes super premissis remedium adhibere in parliamento nostro apud Westm' statuimus quod dicte exceptiones seu responsiones vel inquisitiones patrie super hujusmodi exceptionibus seu responsionibus nullo modo contra hujusmodi recognitiones & fines decetero admittantur. Et volumus quod statutum istud tam locum habeat ad fines prius levatos quam imposterum levandos. Et videant Justitiarii quod note & fines in Curia imposterum levandi publice & solempniter legantur & quod placita interim cessent omnino & hoc fiat per duos dies in septimana secundum discretionem Justiciar'.

"their Ancestors, were alway "seised of the Lands contained in "the Fine, or of some Parcel "thereof; and so Fines lawfully "levied were many Times unjustly defeated and adnulled by Jurors of the Country falsly and "maliciously procured;" 'we 'therefore, intending to provide a 'Remedy in the Premisses, in our 'Parliament at *Westminster* have 'ordained, that such Exceptions, 'Answers, or Inquisitions of the 'Country, shall from henceforth 'in no wise be admitted contrary 'to such Recognisances or Fines. 'And further we will, That this 'Statute shall as well extend unto 'Fines heretofore levied, as to 'them that shall be levied hereafter. And let the Justices see 'that such Notes and Fines, as 'hereafter shall be levied in our 'Court, be read openly and solemnly, and that in the mean 'Time all Pleas shall cease; and 'this must be at two certain Days 'in the Week, according to the 'Discretion of the Justices.'

No Exception to a Fine, that the Demandant was al-

Rast. 349, &c.
3 Co. 88.
Fitz. Replic. 62, 63, 66.
42 Ed. 3, f. 19.

Fines shall be openly read, and then all Pleas shall cease.

18 Ed 1, of Fines.

No. 3.

15 Edward II. *(Statutum de Carleol. de Finibus.)*—The Conusor of a Fine shall come personally before the Justices. Where a Commission shall be awared to take a Fine. Who may admit Attorneys.

Cotton *MS. Claudius*, D. 2.

REX Justiciariis suis de Banco salutem. Cum nuper ordinaverimus quod Fines in Curia nostra levandi rite leventur quos nolumus in aliqua sui parte confringi infirmari seu de toto posse adnullari voluntatem nostram subscriptam vobis mittimus observandam videlicet quod tam partes querentes quam tenentes & defendentes qui jus vel tenementa sua aliis cognoscere vel reddere debeant in placitis Warrantie carte conventionis vel aliis de quibus sint levandi coram quibus antequam Fines illi leventur personaliter veniant ut

'THE King unto the Justices 'of his Bench Greeting.—'Whereas of late we have ordained that all such Fines as are to 'be levied in our Court be lawfully levied, which we will in no 'wise to be infringed or to be adnulled of their whole Power, we 'have sent unto you our Mind in 'Writing firmly to be observed: 'that is to wit, That as well the 'Parties Demandant or Plaintiff, 'as the Tenants or Defendants, 'that will yield or acknowledge 'their Right of Lands or Tenements unto other in Pleas of '*Warrantia Chartæ*, Covenant, 'and other, whereupon Fines are 'to be levied afore you, before

15 Ed. II.
Ed. 1, stat. 1.

The Conusor of a Fine shall come personally before the Justice, that his Defects may be discerned

Rast. 349, &c.
Bro. Fines levy, 122.

No. 3.
15 Edw. II.

such Fines do pass, the Parties shall appear personally, so that their Age, Idiocy, or any other Default, (if any be) may be judged and discerned by you. Provided notwithstanding, That if any Person be by Age or Impotence decrepit, or by Casualty so oppressed and with-holden, that by no Mean he is able to come before you in our Court, then in such Case we will that two or one of you, by Assent of the Residue of the Bench, shall go unto the Party so diseased, and shall receive his Cognisance upon that Plea and Form of Plea that he hath in our Court, whereupon the same Fine ought to be levied. And if there go but one, he shall take with him an Abbot, a Prior, or a Knight, a Man of good Fame and Credit, and shall certify you thereof by the Record; so that all Things incident to the same Fine being examined by him or them, the same Fines according to our former Ordinance may be lawfully levied. And we will not that [illegible] of our Barons of the Exche[illegible], or our Justices, shall admit [illegible] Attorneys, but only in Pleas that pass afore them in the Benches and in Places where they be assigned by us. And the same Power of admitting Attorneys we prohibit and deny to the Clerks and Servants of the said Barons and Justices; and do ordain, That if any Attorneys be admitted hereafter by any of the Persons aforesaid, their Admission shall be of none Effect. Reserved alway to the Chancellor for the Time being his Authority in admitting Attorneys, according to whose Discretion they shall be admitted; and to our Chief Justices, as heretofore hath been observed in the Admission of Attorneys. We will also that this our Ordinance shall take Effect and begin at the *Utas* of the Trinity next ensuing. Given at our Parliament at *Carlisle*, the Fifteenth Year of our Reign.'

A Commission to take a Fine.

Who may allow Attorneys in every Court.
Rast. 96.

The Lord Chancellor and Chief Justices may admit Attorneys.

earum partium etas fatuitas seu quicunque alii defectus si qui fuerint per vos adjudicari poterunt & decerni proviso tamen quod si quis senio an etate decrepita aut debilitate casualiter superveniente sic fuerit detentus & oppressus quod coram vobis ad Curiam nostram aliqualiter non possit accedere In tali casu Volumus quod duo vel unus vestrum de assensu vestro de Banco talem sic oppressum adeant vel adeat & suam recognitionem super placito & forma placiti quod habetur in Curia nostra de quo finis in eadem Curia levari debet assumpto secum si Unus adeat uno Abbate Priore vel Milite uno fide digno et bone fame recipiant vel recipiat & inde vos per Recordum suum reddant vel reddat certiores ut per ipsos vel ipsum omnibus que ad finem levandam pertinent examinatis fines illi ut predictum est rite leventur. Volumus etiam quod aliquis Baronum nostrorum Scaccarii nostri seu Justiciariorum nostrorum aliquos capiant Attornatos nisi tantum in placitis que coram eis & sociis suis in locis & placeis ubi per nos assignantur & eandem de Attornato recipiendo Potestatem clericis & Ministris predictorum Baronum & Justiciariorum denegamus ordinantes quod si aliqui attornati per aliquem predictorum aliquo modo admittantur pro non admissis habeantur & teneantur Potestate tamen Cancellarii nostri qui pro tempore fuerit cui juxta discretionem suam expedire viderit admittendi et etiam Capitalis Justiciarii nostri ut hactenus in Attornatis recipiendis semper observata. Volumus etiam quod hec donacio nostra in Octabis sancte Trinitatis proxime futuris incipiat observari. T. me ipso apud Karliolum viij° die Aprilis. Anno Regni nostri vicesimo quinto.

No. 4.

34 Edward III. c. 16.—Non-claim of Fines shall hereafter be no Bar.

'ITEM it is accorded, That the 'Plea of *Non-claim* of Fines, 'which from henceforth be to be 'levied, shall not be taken nor 'holden for any Bar in Time to 'come.'

ITEM est acorde qe plee de Noun claym des fins qe sont desore a lever ne soit pris ne tenuz pur barre en temps avenir.

34 Ed. III. c. 16. Co. Lit. 262, a.

No. 5.

Henry IV. c. 14.—Inrolling of Writs in the common Place whereupon Fines be levied.

ITEM pur ce qe pluseurs pies des fins des terres & tenementz deinz la Roialme d Engleterre demurrantz en le tresore nostre Seignur le Roi & les notes de tielx fyns demurrantz en le commune Bank aient este devant ces heures embesillez & autres pies & notes de fyns fauxement contreovez & mys en lour lieux par deceit & commiettement daucuns par ont pleusours des gentz de Roialme ont este grandement endamages avant ces heures & purront estre disheritez en temps advenir ordeignez est & establiez qe toutz les briefs de covenant & toutz autres briefs sur queux fyns serront leves en temps avenir ovesqe les briefs de dedimus potestatem si aucuns y soient ove toutz les conusances & notes dicelles avant ce qils soient treihez hors de commune bank par le cirograffer soient enrollez en un rolle destre de recorde pur toutz jours a demurrer en la saufe garde du chief clerk du commune Bank & de sez successours soubz launcien fee de vingt & deux deniers accustume a paiers au chief clerk pur lentree daccorde de chescun fyn sanz plus outre paier au fyn qe si les notes en la garde de cirograffer au les fyns soient embesilez qe lem avera recours au dit rolle

"ITEM, Whereas many Feet "of Fines of Lands and Te- 5 1 "nements within the Realm of "*England* remaining in the King's "Treasury, and the Notes of such "Fines remaining in the common "Bench, have been before this "Time imbesilled, and other Feet "and Notes of Fines falsly coun"terfeit and set in their Place[illegible] "Deceit and Falshood of s[illegible] "whereby many People of[illegible] "Realm have been greatly en[illegible] "maged before this Time, and "may be disherited in the Time "to come;" 'it is ordained and 'established, That all the Writs 'of *Covenant*, and all other Writs 'whereupon Fines shall be levied 'in Time to come, with the Writs 'of *Dedimus potestatem*, if any 'be, with all Knowledges and 'Notes of the same, before that 'they be drawn out of the com'mon Bench by the Cyrographer, 'shall be inrolled in a Roll, to 'be of Record for ever, to remain 'in the safe Custody of the chief 'Clerk of the common Bench, 'and of his Successors, for the 'old Fee of xxii Pence, accus'tomed to be paid to the chief 'Clerk, for the entering of the 'Concord of every Fine, without 'paying any more; to the Intent 'that if the Notes in the Custody 'of the Cyrographer, or the Fines, 'be imbesilled, a Man may have 'Recourse to the said Roll, to

5 Co. 39.

No. 5.
5 Hen. IV. c. 14.

'have Execution thereof, as he 'should have if the Fines were 'not imbesilled; and that all the 'Writs of *Covenant*, and all other 'Writs whereupon Fines have 'been levied in Times past, shall 'be also of Record. And more-'over, all the Fines that were now 'late imbesilled in the Treasury of 'our Lord the King by Persons 'unknown, if the Notes and the 'same Writs of *Covenant* of such 'Fines imbesilled remaining in the 'Custody of the Cyrographer may 'be found, that then to the Party 'shewing Part of the Fines imbe-'silled, such Notes and Writs of '*Covenant* shall remain of Record 'as far forth as the same Fines 'should have been, if no imbesil-'ling thereof had been made.'

pur ent avoir execution come il averoit si les fynes ne fuessent point embesillez & qe toutz les briefs de covenantz & toutz autres briefs sur queux fyns ont este levez du temps passe soient auxi de record & enoutre de toutz les fyns queux sont ore tarde embesilez en le tresorie nostre Seignur le Roi par gentz disconuz qe les notes & briefs de covenantz des ditz fyns embesilez demurantz en le garde de cirographer si purront estre trovez qe a la partie monstrant partie des ditz fyns embesilez tielx notes & briefs de covenant demoergent de recorde si avant come mesmes ceux fyns eussent este si nul embisilement dieeux neust este faite.

No. 6.

1 Richard III. c. 7.—Who shall be bound by a Fine levied before the Justices of the Common Pleas: And Proclamations made thereof.*

1 R. III. c.

18 Ed. 1, st. 4, Modus levandi Fines, altered by 31 El. c. 2.

ITEM, Whereas it is ordained, *established, and enacted in a Parliament holden* in the Time of the Reign of King EDWARD the 'First, by the Statute *De Finibus*, that Notes, and Fines levied in the 'King's Court before his Justices, should be openly and solemnly 'read, and that the Pleas in the mean Time should cease, and this to 'be done Two Days in the Week after the Discretion of the Justices, 'as in the same Statute more plainly appeareth:' Our said Sovereign Lord the King, considering that Fines ought to be of the greatest Strength to avoid Strifes and Debates, and be a final End and Conclusion, that it be willed and ordained, by the Advice and Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, That after the ingrossing of every Fine, to be levied after the Feast of *Easter* next coming in the King's Court before the Justices of the Common Place, of any Lands, Tenements, or other Hereditaments, the same Fine shall be openly and solemnly read and proclaimed in the same Court the same Term, and in Three Terms of the Year next following the same ingrossing in the same Court, at Four several Days in every Term, and in the same Time that it is so read and proclaimed, all Pleas shall cease, and moreover a Transcript of the same Fine shall be sent by the said Justices of the Common Place to the Justices of Assises of the County where the said Lands and Tenements be; they to cause the said Fine to be read and proclaimed openly and solemnly in every their Sessions of Assises, to be holden the same Year, if Assises do then hold, and all the Pleas in the mean Time to cease.

A Transcript of the Fine shall be sent to the Justices of Assize of the County where the Land lieth, to be proclaimed there.

* All the Clauses in this Act being copied almost verbatim with some Additions in the Statute next inserted, (4 Henry VII.) the Statute of Richard is now become useless and obsolete. Cruise, Fines ch. ix. § 2.

II. Also it is ordained and established by the said Authority of Parliament, That a like Transcript of the same Fine shall be sent to the Justices of Peace of the County where the said Lands and Tenements be, they to cause open and solemn Proclamation of the said Fine to be made at Four General Sessions of the Peace to be holden in the same Year. No. 6. 1 Ric. III c. 7. A Transcript sent to the Justices of Peace.

III. The said Justices of Assises, and also Justices of Peace, to certify the same Proclamation to the King's Justices of the Common Place, at the Second Day of Return of the Term then next following, after which Proclamation done and certified, the said Fine to be a final End, and to conclude, as well Privies as Strangers to the same; except Women covert, other than be Parties to the said Fine, and every Person or Persons then being within Age, in Prison, or out of this Realm of *England*, or not of whole Memory at the Time of such Fine levied. Who shall be concluded by a Fine, who not.

IV. And saving to every Person or Persons such Right, Title, Claim, and Interest, which they have to or in the said Lands, Tenements, and other Hereditaments, at the Time of such Fine ingrossed, so that they do pursue their said Right, Title, Claim, or Interest, by Way of Action, or lawful Entry, within Five Years next after the said Proclamation made, had, or certified. The immediate Right of Strangers saved, if pursued in Time.

V. And also saving to all other Persons such Action, Right, Title, Claim, and Interest, in and to all the said Lands, Tenements, and other Hereditaments, which shall grow, remain, descend, or come to them after the said Fine ingrossed, by Force of any Gift in Tail, or by any other Cause or Matter had or made before the said Fine levied, so that those Persons take their said Actions, or pursue their said Right and Title according to the Law, within five Years next after such Actions, Right, Title, Claim, or Interest, grown, descended, remained, or come to them; and also that the said Persons, and their Heirs may have their said Action against the Taker of the Profits of the said Lands, Tenements, and other Hereditaments at the Time of such Action to be taken. The Right of Strangers in Reversion saved. Actions maintainable against the Pernor of the Profits.

VI. And if the same Persons at the Time of such Action, Right, and Title, grown, descended, remained, or come to them, be Covert Baron, or within Age, or in Prison, or out of this Land, or not of whole Memory; it is ordained, established, and enacted by Authority aforesaid, That their Actions, Right, and Title shall be reserved, and saved to them and their Heirs till the Time they come and be at their full Age, out of Prison, within this Land, unmarried, and of whole Memory, so that they or their Heirs take their said Actions, or lawful Entry, according to their Right and Title, within Five Years next after they come and be at their full Age, out of Prison, within this Land, unmarried, and of whole Memory, and pursue the same Actions, or take their lawful Entry with Effect, according to the Law of *England*. The Right of Infants, Women covert, Persons in prison, out of this Land, or not of whole Memory, saved.

VII. Also by Authority of the said Parliament, it is ordained, established, and enacted, That all such Persons which be Covert, not Parties to the Fine, and every Person being within Age, in Prison, or out of this Realm, or not of whole Memory, at the Time of the said Fines levied and engrossed, by this Act of Parliament before excepted, having any Right or Title, or Cause of Action to any of the said Lands, Tenements, and other Hereditaments, that they or their Heirs take their said Actions, or lawful Entry, according to their Right and Title, within Five Years next after that the said Persons come to be of full Age, out of Prison, unmarried, within this Land, and also become of whole Memory; and also sue the same Actions, and take their lawful Entry, and so pursue with Effect, according to the Law of the Realm of *England*. And moreover, if they do not take their An Entry must be made, or an Action taken, within five Years after the Defects removed.

No 6
1 H. VII c 7

said Actions, and also their said lawful Entry in the Manner as is aforesaid, that then they shall be concluded by the said Fines for ever, in like Form as they that be Parties and Privies to the said Fines levied and ingrossed

VIII Also by the said Authority it is ordained and established, That every Fine which shall be from henceforth levied in any of the King's Courts, of any Manors, Lands, Tenements, or other Possessions, after the Manner, Usage, and Form that Fines have been levied before the making of this Act before rehearsed, shall be of like Strength, Effect, and Authority, as Fines so levied be or were before the making of this Act; this Act, or any other Act, in this Parliament made, or to be made, notwithstanding And that every Person shall be at his Liberty to levy any Fine hereafter, as he will himself at his Pleasure, after the Manner contained and ordained in and by this Act, or after the Manner and Form before used.

No 7.

4 Henry VII. c. 24.—How often a Fine levied in the Common Pleas shall be read and proclaimed, and who then shall be bound thereby.

4 H. VII c. 24

'ITEM, Where it was ordained in the Time of King EDWARD the 'First, by the Statute *de Finibus*, that Notes and Fines to be 'levied in the King's Court afore his Justices should be openly and 'solemnly read, and that Pleas in the mean Time should cease, and 'this to be done by two Days in the Week, after the Discretion of the 'Justices, as in the said Statute more plainly appeareth' The King our Sovereign Lord considereth, That Fines ought to be of the greatest Strength to avoid Strifes and Debates, and to be a final End and Conclusion, and of such Effect were taken afore a Statute made of Non-claim, and now is used to the contrary, to the universal Trouble of the King's Subjects, will therefore it be ordained, by the Advice of the Lords Spiritual and Temporal, and the Commons, in the said Parliament assembled, and by the Authority of the same, That after the ingrossing of every Fine to be levied after the Feast of *Easter*, that shall be in the Year of our Lord *M CCCC XC.* in the King's Court, afore his Justices of the Common Place, of any Lands, Tenements, or any other Hereditaments, the same Fine be openly and solemnly read and proclaimed in the same Court the same Term, and in three Terms then next following the same Ingrossing in the same Court, at four several Days in every Term; and in the same Time that it is so read and proclaimed, all Pleas do cease And the said Proclamations so had and made, the said Fine to be a final End, and conclude as well Privies as Strangers to the same, except Women Covert (other than been [illegible] Fine) and every Person then being within Age of *xxi* Years, [illegible], or out of this Realm, or not of whole Mind at the Time of the said Fine levied, not Parties to such Fine, and saving to every Person or Persons, and to their Heirs, other than the Parties in the said Fine, such Right, Title, Claim, and Interest, [illegible] their [illegible] within five Years next after the said Proclamations had and made: And also saving to all other Persons such Action, Right, Title, Claim, and Interest in or to the said Lands, Tenements, or other Hereditaments, as first shall grow, remain, or descend, or come to them after the said

Fine ingrossed and Proclamation made, by Force of any Gift in the Tail, or by any other Cause or Matter had and made before the said Fine levied; so that they take their Action, or pursue their said Right and Title, according to the Law, within five Years next after such Action, Right, Title, Claim, or Interest to them accrued, descended, remained, fallen, or come; (1) And that the said Persons, and their Heirs, may have their said Action against the Pernor of the Profits of the said Lands and Tenements, and other Hereditaments, at the Time of the said Action to be taken: And if the same Persons, at the Time of such Action, Right, and Title accrued, descended, remained, or

No. 7.
4 H. VII. c. 24.

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(1) If a Tenant in Tail make a Feoffment, or Bargain and Sale, and the Feoffee or Bargainee levy a Fine, the Issue in Tail have five Years from the Death of the Tenant in Tail, as no Claim could be made by Tenant in Tail in his Life Time; but if the Tenant in Tail is disseised, the Time begins to run immediately from the Fine being levied; and the Time having run against the Ancestor, continues against the Issue in Tail. 3 Rep. 87. Plowden 374. Penyston v. Lyster, Cro. Eliz. 896. If Fine be levied by Tenant in Tail, the Party in Reversion or Remainder, has five Years from the Failure of the Issue in Tail. Plowden 374. T. Raym. 151.

If there be no Person intitled to claim at the Time of the Fine levied, the Person afterwards acquiring a Title, has five Years to make a Claim; therefore if A. being entitled to a Term of Years in Remainder, dies—and after the Right to the Term accrues in Possession, a Fine is levied, there being no Executor or Administrator of A. the Time only begins to run from the taking Administration. Stamford's Case, cited Cro. Jac. 61.

A Person having distinct Rights, and barred by Non-claim as to the One, is within the second Saving of the Statute as to the other, as if the Tenant for Life levy a Fine, and the Party in Remainder does not claim in Respect of the Forfeiture within five Years, he has five Years from the Death of the Tenant for Life; although the Words of the Statute are *other Persons* — Laund. v. Tucker, Cro. Eliz. 254. 3 Rep. 78. *b.* [But notwithstanding this Saving, it was held in B. R. that the Fine of Tenant for Life divests the Remainder, and turns it to a Right which is not devisable. Goodright v. Forrester, 8 East, 552, affirmed in the Exchequer Chamber on a different Ground, mentioned infra.]

So if Lessee for Years make a Feoffment, and afterwards levy a Fine, the Lessor has five Years from the Expiration of the Term of Years. Whaley v. Tancred, 1 Ventr. 241. T. Raym. 219;—and see Fermor's Case, 3 Rep. 77. 2 And. 176. Saunders v. Lord Annesley, 2 Scholes and Lefroy, 99.—But if it be not a new Right, but only the same Right which accrues a second Time, the Saving does not apply, as if Tenant in Tail make a Lease which is void, and levy a Fine, and the Person entitled in Remainder do not enter within five Years after the Death of the Ancestor, he has not a new five Years after the Expiration of the Lease. Salvin v. Clerk, Cro. Car. 156. W. Jones, 211. The Cognizee of a second Statute has five Years from the Time of Satisfaction of the first being entered on the Record. Deighton v. Grenville, 2 Ventr. 333. 1 Sho. 36. Skinn. 260.

The Statute does not bar Bishops, Rectors, or Persons entitled to Lands in Respect of Offices for Life; but each particular Person is bound by a Lapse of five Years in his own Time. Plowd. 538.

In the Case of Goodright v. Forrester, in the Exchequer Chamber, above referred to, 1 Taunt. 578, it was held, that if A, being Tenant for Life, with Remainder to his own Executors for forty Years, levy a Fine;—and afterwards B being entitled to the Reversion in Fee, devises to C for Life with Remainder to D, and C does not enter within five Years from the Expiration of the Term of forty Years, D has not five Years from the Death of C, (supposing the Reversion devisable after the Fine) for that as B or his Heirs could not claim after the five Years, he could not prolong the Time by the Limitations of his Will. It was held by the Court, that the Plaintiff's Title was that of the same Estate which B had at the Time of the Fine levied; and which first accrued before the Fine, and that the Plaintiff could not bring himself within the Saving as the Title did not first accrue to him after the Fine as a distinct original Title by Matter before the Fine.

No. 7.
4 H. VII. c. 24.

come unto them, be Covert de Baron, or within Age, in Prison, or out of this Land, or not of whole Mind, then it is ordained by the said Authority, That their Action, Right, and Title, be reserved and saved to them and their Heirs, unto the Time they come and be at their full Age of *xxi.* Years, out of Prison, within this Land, uncovert, and of whole Mind, so that they, or their Heirs, take their said Actions, or their lawful Entry, according to their Right and Title, within five Years next after that they come and be at their full Age, out of Prison, within this Land, uncovert, and of whole Mind, and the same Actions pursue, or other lawful Entry take, according to to the Law (2) And also it is ordained by the Authority aforesaid, That all such Persons as be Covert de Baron, not Party to the Fine, and every Person being within Age of *xxi.* Years, in Prison, or out of this Land, or not of whole Mind, at the Time of the said Fines levied and ingrossed, and by this said Act afore except, having any Right or Title, or Cause of Action, to any of the said Lands and other Hereditaments, that they, or their Heirs, inheritable to the same, take their said Actions or lawful Entry according to their Right and Title, within Five Years next after they come and be of Age of *xxi* Years, out of Prison, uncovert, within this Land, and of whole Mind, and the same Actions sue, or their lawful Entry take and pursue, according to the Laws. And if they do not take their Actions and Entry as is aforesaid, That they and every of them, and their Heirs and the Heirs of every of them, be concluded by the said Fines for ever, in like Form as they be that be Parties or Privies to the said Fines. Saving to every Person or Persons, not Party nor Privy to the said Fine, their Exception to avoid the same Fine, by that, that those which were Parties to the Fine, nor any of them, nor no Person or Persons to their Use, ne to the Use of any of them, had nothing in the Lands and Tenements comprised in the said Fine at the Time of the said Fine levied. (3) And it is ordained by the said Authority, That every Fine that hereafter shall be levied in any of the King's Courts, of any Manors,

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(2) It is established in the Case of Howell v. Lord Zouch, Plowden 355, and confirmed in Doe on the Demise of Durome v. Jones, 4 T. R. 300, and several intermediate Cases, that on every Statute of Limitation, if a Disability be once removed, the Time must continue to run notwithstanding any subsequent Disability; and in the last mentioned Case, this was ruled to be the Law whether the Disability be voluntary or involuntary. So in Case of Disabilities or Protections at Common Law against the Right of Entry being tolled by Descent. See Lessee of Carter v. Tash, 1 Salk. 241. See also 1 Inst. 338—246—353. It was first positively determined in Dittin v. Leman, 2 H. Bl. 584, that if a Party die under Disability, his Heir not under Disability, must claim within the five Years.

(3) A Fine levied by a Person who has no Estate of Freehold at the Time of levying it, is of no Effect. A Tenant for Years may acquire the Freehold, by making a Feoffment upon which his Fine will operate. See Whaley v. Tancred, 1 Ventr. 241. 1 Raym. 219. Parkhurst v. Smith, Willes, 317, 4 B. P. C. 405, 3 Atk. 135.

In the Case of a Fine of a New River Share, there not appearing to have been any Entry or Receipt of Rent before the Fine levied, Lord Hardwick held, that there was not a sufficient Seisin to support the Fine. Lord Townsend v. Ash, 3 Atk. 336.

In Doe on the Demise of Osborne v. Spencer, 11 East, 495, it was held, that the Execution of a Writ of Possession on the Evening of the first Day of Term, (Sixth November) together with a subsequent Receipt of Rent for the preceding Half-Year, was sufficient Evidence of Seisin to support a Fine levied in Fact on the Eighth of November; but having Relation to the Sixth, although there was not any actual Change of Tenant; and Lord Ellenborough said, that he should have thought that a Receipt of Rent after a Fine levied for a Period of Time antecedent to the Fine, was *prima facie* Evidence of the Party's Possession by his Tenant during the Period for which the Rent was recived, unless Fraud or Contrivance appeared.

Lands, Tenements, and other Possessions, after the Manner, Use, and Form, that Fines have been levied afore the making of this Act, be of like Force, Effect, and Authority, as Fines so levied be or were afore the making of this Act; this Act, or any other Act in this present Parliament made or to be made notwithstanding. And every Person shall be at Liberty to levy any Fine hereafter at his Pleasure, whether he will after the Form contained and ordained in and by this Act, or after the Manner and Form aforetime used. No. 7. 4 H. VII. c. 24.

No. 8.

32 Henry VIII. c. 36.—For the Exposition of the Statute of Fines.

'FORASMUCH as in the Fourth Year of the Reign of the late King of famous Memory, King HENRY the Seventh, Father of our most dread Sovereign Lord the King that now is, it was, among many good and sundry Statutes and Ordinances then made for the common Wealth, enacted, ordained, and established the Form and Manner how Fines should be levied with Proclamations in the King's Court before his Justices of his common Place, and that such Fines, with Proclamations so had and made, to the Intent to avoid all Strife and Debates, should be a final End, and conclude as well Privies as Strangers to the same, certain Persons excepted and saved, as in the same Statute more plainly appeareth; sithen which Time, by Diversity of Interpretations, and expounding of the same Statute, it hath been, and is yet, by some Manner of Persons doubted and called in Question, whether Fines with Proclamations levied or to be levied before the said Justices, by any Person or Persons having, or claiming to have, in any Manors, Lands, Tenements or Hereditaments comprised in the same Fine, in Possession, Reversion, Remainder, or in Use, any Manner of Estate-tail, should immediately after the said Fine levied, engrossed, and Proclamation made, bind the right Heir and Heirs of such Tenant in Tail, and every other Person and Persons seised or claiming to their Use or Uses; by Occasion whereof divers Debates, Controversies, Suits and Troubles have been begun, moved, and had within this Realm, and mo be like to ensue, if Remedy for the same be not provided;' For the Establishment and Reformation whereof, and for the sure and sincere Interpretation of the said Statute, in avoiding all Controversies, Ambiguities and Doubts that now or happen, our said Sovereign Lord the King, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, hath enacted and ordained, That all and singular Fines, as well heretofore levied, as hereafter to be levied before the said Justices with Proclamations, according to the said Statute, by any Person or Persons of full Age of one and twenty Years, of any Manors, Lands, Tenements or Hereditaments, before the Time of the said Fine levied in any wise entailed to the Person or Persons so levying the same Fine, or to any the Ancestor or Ancestors of the same Person or Persons in Possession, Reversion, Remainder or in Use, shall be, immediately after the same Fine levied, engrossed, and Proclamations made, adjudged, accepted, deemed and taken, to all Intents and Purposes, a sufficient Bar and Discharge for ever against the said Person and Persons, and their Heirs claiming the same Lands, Tenements and Hereditaments, or any Parcel thereof, only by Force of any such

32 H. VIII. c. 36.

Plowd. 246. 3 Co. 51, & 84. 7 Co. 32. 9 Co. 140. 11 Co. 75. Bro. Assur. 6. Bro. Feoffm. al. Use 57. Bro. Taile 2. Bro 118. Co. Lit. 372, a. 1 Bulstr. 33. 13 Ed. 1, st. 1. c. 1. 1 Leon. 244. 2 Leon. 36, 57 62, 224. 3 Leon. 10 1 Anders. 3, 39, 141. Skinner, 95. 2 And 109, 114. Cro. Car 435. Vin. V. 13. 2'4. Wood Pt. 1, 530.

No. 8.
32 H. VIII. c. 36.

Entail, and against all other Persons claiming the same, or any Parcel thereof, only to their Use, or to the Use of any Manner of Heir of the Bodies of them; any Ambiguity, Doubt or Contrariosity of Opinion, risen or grown upon the said Estatute to the contrary notwithstanding. (1)

A Fine levied by the Wife of the Inheritance of her late Husband shall be void. 11 H. 7, c. 20.

II. Provided alway, That this Act, nor any Thing therein contained, shall extend to bar or exclude the lawful Entry, Title or Interest of any Heir or Heirs, Person or Persons, heretofore given or hereafter to be given, grown or accrued to them or any of them, in or to any Manors, Lands, Tenements and Hereditaments, by Reason of any Fine or Fines heretofore levied, or hereafter to be levied, by any Woman after the Death of her Husband, contrary to the Form, Intent and Effect of the Statute made in the said eleventh Year of the said King Henry the Seventh, of any Manors, Lands, Tenements and Hereditaments, of the Inheritance or Purchase of the said Husband or of any his Ancestors, given or assigned to any such Woman in Dower, for Term of Life or in Tail, in Use or in Possession, but that the same Act made in the said eleventh Year of the said late King

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(1) By Virtue of this Enactment and the preceding Statute, 4 Henry VII. the Fine of a Party who is entitled to the Premises as Tenant in Tail, bars the Right of all who must necessarily convey their Descent through the Cognizor before they can make out their Title to the Estate;—and the Fine of Tenant in Tail in Remainder, is equally a Bar to the Issue in Tail, as the Fine of a Tenant in Tail in Possession. So the Possibility of an Estate Tail in the Ancestor is sufficient to bar the Issue, as where the Issue in Tail levied a Fine in the Life of his Ancestor. See Archer's Case, 3 Rep. 90. The Fine of a Party who is Heir in Tail in Possession, bars the collateral Heirs claiming under the same Descent, and who must necessarily claim through the Cognizor, as if Lands be given to the Father and the Heirs of his Body, and the eldest Son after the Death of the Father levies a Fine, it is a Bar to the Younger; but a Fine levied by the Daughter being Issue in Tail, is no bar to a Son afterwards born; nor will a Fine levied by Issue in Tail who dies in the Life of the Ancestor be a Bar to the collateral Issue. (Mc. Williams' Case, Hob. 332 S. C. Sir Wm. Jones, by the Name of Godfrey v. Wade.) See the above Points more fully stated, with the Authorities, in Mr. Cruise's Treatise on Fines, Ch. 9.

Although a Fine is not, like a Recovery, a Bar to the Parties in Remainder or Reversion; yet if the Party in Remainder be collateral Heir to the Tenant in Tail in Possession levying the Fine, he is bound by the Warranty, which is always contained in the Fine as the Statute 4 & 5 Anne, c. 16. (ante Class I. No 23) only makes void Warranties by Tenants for Life, and collateral Warranties by any Ancestor not having an Estate of Inheritance in Possession.—See Cruise on Fines, Ch. 9. § 43.

The Issue in Tail are barred by a Fine with Proclamations, although the Proclamations are not completed in the Life of the Cognizor, or at the Time of bringing the Formedon by the Issue. See 3 Rep. 84—90.

There is a material Difference between the Effect of a Fine and a Recovery by Tenant in Tail, with a Reversion or Remainder in Fee to himself; for if a Tenant in Tail with Reversion in Fee to himself, levy a Fine, the Effect of that is to create a base Fee, and that becomes merged in the other Fee, and lets in all the Incumbrances of the Ancestor, which has frequently happened in Practice, from a Person being ill advised to levy a Fine instead of suffering a Recovery. Per Lord Kenyon, in Roe ex. dem. Crow v. Baldwere, 5 T. R. 109. Accordingly, in the Earl of Shelburne v. Biddulph, 4 Bro. P. C. 394, an Estate was limited to the Father for Life, Remainder to the Sons successively in Tail, Remainder to the Father in Fee. A, the first Son, made a Lease for three Lives, with Covenant for perpetual Renewal. A died without Issue, and B, the second Son, levied a Fine, and the Covenant was held to bind the Fee.

So if Tenant for Life with Remainder to his Son in Tail, and the Reversion in Fee in himself, becomes indebted by Bond, or incumbers the Estate in any other Manner, if after the Death of such Tenant for Life, his Son levies a Fine, it will let in the Reversion in Fee, and make the Estate liable to all his Father's Incumbrances. Kinaston v. Clarke, 2 Atk. 204. See Cruise on Fines, Ch. 12.

No. 8.
32 H. VIII. c. 36.

HENRY the Seventh shall stand, remain and be in full Strength and Virtue in every Article, Sentence and Clause therein contained, in like Manner and Form as though this present Act had never been had ne made.

A Fine levied by him which is restrained by Parliament shall be void.
Keilw. 210.

III. Provided also, That this Act, ne any Thing therein contained, do extend to any Fine or Fines at any Time heretofore levied, or hereafter to be levied, of any Lordships, Manors, Lands, Tenements or other Hereditaments whatsoever they be, the Possessioners and Owners whereof, by reason of any express Words contained in any special Act or Acts of Parliament made or ordained since the said fourth Year of the Reign of the said late King HENRY the Seventh, stand, be bounden or restrained from making any Alienations, Discontinuances, or other Alterations of any of the same Lordships, Manors, Lands, Tenements or other Hereditaments, contained in the said Fine or Fines; but that all and every such Fine and Fines at any Time heretofore levied, or hereafter to be levied, by any such Person or Persons or their Heirs, of any such Lordships, Manors, Lands, Tenements or other Hereditaments, shall be of such like Force and Strength in the Law, and of none other Effect than the same Fine so levied, or to be levied, should have been if this present Act had never been had nor made; any Thing therein contained to the contrary thereof in any wise notwithstanding.

A Fine of Lands in Suit.

IV. Provided also, That this Act, nor any Thing therein contained, shall extend to any Fine or Fines heretofore levied of any Manors, Lands, Tenements or Hereditaments now in Suit, Demand or Variance, in any of the King's Courts, or whereof any Charters, Evidences or Muniments concerning the same, be now in Demand in the King's high Court of Chancery; nor to any Fine or Fines heretofore levied of any Manors, Lands, Tenements or Hereditaments, which before the first Day of this present Parliament have been recovered, gotten or obtained by Reason of any Judgment, Entry, Decree, Arbitrement, or other lawful Means, contrary to the Purport, Intent or Effect of any such Fine or Fines thereof heretofore levied; nor to any Fine or Fines heretofore levied, or hereafter to be levied, by any Person or Persons, of any Manors, Lands, Tenements or Hereditaments, before the Time of the levying of the same Fine, given, granted or assigned to the said Person or Persons so levying the same Fine, or to any of his or their Ancestors in Tail, by Virtue of any Letters Patents of our said Sovereign Lord, or any of his Progenitors, or by Virtue of any Act or Acts of Parliament, the Reversion whereof, at the Time of the same Fine or Fines so levied, being in our said Sovereign Lord, his Heirs or Successors; but that every such Fine and Fines shall be of like Force, Strength and Effect, as they were or should have been, if this Act had never been had nor made.

A Fine of Lands before recovered.
1 And. 16.

A Fine of Land whereof the Reversion is in the King.

A Fine levied by one restrained by Act of Parliament.
Dyer 32.
6 Co. 55.
8 Co. 74.
Bro. Assur. 6.
Bro. Fines 121.

No. 9.

34 & 35 Henry VIII. c. 20.—An Act to embar feigned Recovery of Lands wherein the King is in Reversion.*

34 & 35 H. VIII. c. 20.

'WHERE divers of the King's most noble Progenitors, and 'especially the King our Sovereign Lord most liberally above 'all other, hath given and granted, or otherwise provided to his and

* See a full Account of this Statute 1 Inst. 372. b.

The Statute only extends to Estates granted as a Reward to Services, and not to a Grant of Lands enfeoffed to the King previous to his Accession to the Crown, to the Intent that the same might be re-enfeoffed; and per Yates, J.

No. 9.
34 & 35 H. VIII. c. 20.

The special Reasons of the King's Gifts of Lands to certain Persons in Tail.

1 Anders. 46, 141, 171. Hob. 299. Moor 195, pl. 344. See 4 Bur. 2223.

'their loving and good Servants and Subjects, as well Nobles as other, 'Manors, Meases, Lands, Tenements, Rents, Services and Hereditaments, to them and to their Heirs Males of their Bodies, or to the 'Heirs of their Bodies lawfully begotten, minding at the Time of such 'Gifts not only to prefer and advance presently the Donees, but also 'their Heirs in Blood of their Bodies, according to the Limitation of 'the said Gifts; to the Intent that Recompence for the Service of such 'Donees should not only be a Benefit for their own Persons, but a 'continual Profit and Commodity to and for their Heirs coming of 'their Bodies, whereby such Heirs should have in special Memory 'and daily Remembrance the Profit that they have and take by the 'Service of their Ancestors done to the Kings of this Realm, and 'thereby be the better encouraged to do like Service to their Sovereign 'Lord, as to their Duties of Allegiance appertaineth. And forasmuch 'as sundry such Donees in Tail and their Heirs have suffered and 'daily suffer by their Consents untrue and feigned Recoveries to be 'had against them, with common Voucher or otherwise, of Manors, 'Meases, Lands, Tenements or Hereditaments so given, granted or 'provided in Tail, by the King's Majesty or his noble Progenitors, as 'is aforesaid, to the Intent by Fraud, Covin, and untrue Means, not 'only to bind and defeat their Heirs inheritable by the Limitation of 'such Gifts, but also the King of his Prerogative, Wardship, *Primer 'Seisin* and other his Rights; whereby Questions and Diversities of 'Opinions have risen, and yet be, whether such feigned and untrue 'Recoveries against such Tenants in Tail by their own Consents, of 'Lands, Tenements, or Hereditaments, whereof the Reversion or 'Remainder is in the King at the Time of such Recovery or Recoveries had, should after the Death of the Tenant in Tail bind the Heirs 'in Tail, or not.'

Moor 115, pl. 258. 2 Roll 417. Co. Lit. 372, b. Cro. El. 519, 595. Dyer 32. 2 Co. 15, 52. 8 Co. 77. Br. Assuran. 6. Br. Discont. de possess on 32. Br. Formed. 50. Br. Recover. 31 Co. Lit. 335, a. Neale ex demis. Duc Athole v. Wilding in B.R. Pasch. 23 G. 2. Vin. V. 18, 198.

II. For plain Declaration whereof, and to avoid and extinct from henceforth Diversities of Opinions in such Cases, be it ordained and enacted by Authority of this present Parliament, That no such feigned Recovery hereafter to be had by Assent of Parties against any such Tenant or Tenants in Tail of any Lands, Tenements or Hereditaments, whereof the Reversion or Remainder, at the Time of such Recovery had, shall be in the King, shall bind or conclude the Heirs in Tail, whether any common Voucher be had in any such feigned Recovery, or not, but that after the Death of every such Tenant in Tail, against whom any such Recovery shall be had, the Heirs in Tail may enter, have and enjoy the Lands, Tenements and Hereditaments so recovered, according to the Form of the Gift in Entail; the said Recovery, or any Thing or Things hereafter to be had, done or suffered by or against any such Tenant in Tail to the contrary notwithstanding.

No Recompence in Value against the Voucher.

III. And be it also further enacted by the Authority aforesaid, That the Heirs of every such Tenant in Tail, against whom any such feigned Recovery shall be had, shall take no Advantage for any Recompence in Value against the Voucher nor his Heirs.

The Lessee of Tenant in Tail shall enjoy his Term against the Heir of the Lessor.

IV. Provided alway, That this Act, nor any Thing therein contained, be in any wise prejudicial or hurtful to the Lessee or Lessees of any such Tenant in Tail, made or to be made by Writing indented, of any Manors, Lands, Tenements or Hereditaments, for Term of twenty-one Years, three Lives, or under, whereupon the accustomable Rent or Rents, or more, is or shall be reserved yearly during the said Term and Terms; but the same Leases and Lessees

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the Court will not stretch to enlarge the Interpretation of a Statute which prohibits the natural Right of Alienation by Tenant in Tail.—Perkins v. Sewell, 4 Bur. 2223, 1 Bl. Rep. 654.

No. 9.
34 & 35 H. VIII. c. 20

shall and may have and enjoy his or their Term and Terms therein against the Heir and Heirs of every such Tenant in Tail, according to the Tenor, Purport and Effect of the Statute made in the thirty-second Year of the Reign of our Sovereign Lord King HENRY the Eighth; any Thing in this Act contained to the contrary thereof notwithstanding.

23 H. 8, c. 28.

No. 10.

34 & 35 Henry VIII. c. 22.—An Act that Fines in Towns Corporate shall be made as the same have been in Times past.

34 & 35 H. VIII. c. 22

32 H. 8, c. 28.

'WHERE in the Parliament holden in the thirty-second Year of 'our most dread Sovereign Lord King HENRY the Eighth, it 'was enacted by Authority of the said Parliament amongst other, 'That no Fine, Feoffment, or other Act or Acts, hereafter to be 'made, suffered or done, by the Husband only, of Manors, Lands, 'Tenements or Hereditaments, being the Inheritance or the Freehold 'of his Wife, during the Coverture between them, shall in any wise 'be or make any Discontinuance thereof, or be prejudicial or hurtful 'to the said Wife, or to her Heirs, or to such as shall have Right, 'Title or Interest by the same by the Death of such Wife or Wives; 'but the same Wife and her Heirs, and such other to whom such 'Right shall appertain after her Decease, shall and may then lawfully 'enter into all such Manors, Lands, Tenements and Hereditaments, 'according to their Rights and Titles therein; any such Fine, Feoff-'ment or other Act, to the contrary notwithstanding. Sithence the 'making of which Act, divers Doubts, Questions and Ambiguities 'have arisen, that is to say, whether the Recoveries and Deeds in-'rolled, which be in Nature of Fine, and whereupon Women Covert 'have been used to be examined, taken, had or acknowledged, as well 'within the City of *London*, as in many other Cities, Boroughs and 'Towns within the Realm of *England*, should bind all such Women 'Covert, that should happen to be examined upon the same Recove-'ries and Deeds inrolled:' In avoiding therefore of all such Ambiguities and Doubts, be it enacted by the King our Sovereign Lord, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, That all Recoveries, Deeds inrolled, and Releases heretofore acknowledged and taken, or at any Time hereafter to be taken and acknowledged, before the Mayors, Aldermen, Recorders, Chamberlains, or other Head Officer or Officers, as well of the City of *London*, as of any other City, Borough or Town Corporate within the Realm of *England*, having Power and Authority to take and receive the same, according to the lauda[illegible]sages and Customs of the said Cities, Boroughs and Towns, and every of them, shall stand and remain of like Force, Strength and Effect, to all Intents and Purposes, as they or any of them were before the making of the said Act in the said thirty-second Year of our said Sovereign Lord; any Thing in the same contained to the contrary in any wise notwithstanding. (1)

The Force of Recoveries, Deeds inrolled, & Releases acknowledged by Women Covert, in certain Corp Town

18 Ed. 3, f. 29.
45 Ass. pl. 8.

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(1) In Error to reverse a Fine levied before the Bailiffs of Shrewsbury, it was objected that it did not appear that they had any Authority to take Fines, and that they could not have it by Prescription, or by general Words in the King's Grant. And *per Curiam*, the Fine is void; for it appeareth not by what Authority it was levied; for it is in derogation of the Crown, and the Profits of the Crown. Waring v. White, Cro. Eliz. 314. and see 1. Leon. 188. S. P. Fines in inferior Courts have only the Operation of Fines at Common Law, and do not bar the Issue in Tail. Com. Rep. 624.

No. 11.

P. 34 & 35 Henry VIII. c. 26.—An Act for certain Ordinances in the King's Dominion and Principality of Wales.

34 & 35 H. VIII. c. 26. Recoveries, Fines, Concords, &c. taken before the Justices.

XL. *Item*, That Recoveries and Fines of Record, and Warrants of Attorney for the same, shall and may be taken before every of the said Justices, of Lands, Tenements and Hereditaments within his Authority, by Force of his general Commission, without any Writ of *Dedimus potestatem* to be sued for the same, in like Manner and Form as is used to be taken before the King's Chief Justice of his Common Place in *England*.

No. 12.

37 Henry VIII. c. 19.—The Bill of Fines in County Palatine.

37 H. VIII. c. 19. 1 Roll 305. 33 H. 6, c. 2.

'FORASMUCH as divers good and beneficial Statutes, for the 'Commodity of the King's Subjects within this Realm, have 'heretofore been made by Authority of Parliament, concerning the 'levying of Fines with Proclamation, both for avoiding of Strife, and 'also for the Surety of the King's Subjects, to be had of and in Lands, 'Tenements and Hereditaments, by them purchased or obtained; 'which good and beneficial Statutes do not extend to Fines levied in 'the County Palatine of *Lancaster*:'

Fines levied in Lancaster are of like Force as Fines acknowledged before the Justices of the Common Pleas.

II. Be it therefore ordained and enacted by the King our Sovereign Lord, and the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same Parliament, That all and singular Fines, which at any Time hereafter shall be levied or knowledged before the Justices of our Sovereign Lord the King, or of his Heirs or Successors, of the County Palatine of *Lancaster*, commonly called Justices of Assise at *Lancaster*, or before one of them, of any Lands, Tenements or other Hereditaments, lying or being within the County Palatine of *Lancaster*, which shall be openly read and proclaimed three several Days in the open Sessions in the presence of the Justices of Assise at *Lancaster*, or of one of them for the Time being, at the same Sessions that the same Fines shall fortune to be ingrossed, and also that shall be openly read and proclaimed in the Presence of the Justices of Assise at *Lancaster*, or of one of them for the Time being, at the two next General Sessions that shall be holden in the said County Palatine of *Lancaster*, before the Justices of the same County, commonly called Justices of Assise at *Lancaster*, or before one of them, next after the levying or ingrossing of such said Fine, at three several Days in either of the said two Sessions, after such Manner and Form as is commonly used in the King's Court of his Common Place at *Westminster*, shall be of like Force, Strength and Effect in the Law, to all Intents, Constructions and Purposes, as Fines being duly levied with Proclamations before the King's Justices of his Common Place be or ought to be of.

No. 13.

2 & 3 Edward VI. c. 28.—For Fines with Proclamation in the County Palatine of *Chester*.

'IN humble wise shewn unto your Excellent Majesty, your true 'and faithful Subjects and Liege-Men, the Inhabitants of your 'Grace's County Palatine of *Chester*, That whereas heretofore by 'Authority of Parliament, divers necessary and beneficial Statutes 'have been made for and concerning the Levying of Fines with Pro-'clamation, which are not only necessary for the Preservation of 'Quietness and Concord amongst your loving Subjects, and for the 'avoiding of Strife and Contention, but also for the great and perfect 'Assurance of all such Persons to whom any such Fines are levied of 'any Lands, Tenements and Hereditaments; which said beneficial 'and necessary Statutes do not extend to any Fines to be levied within 'your said County of *Chester*:' In tender Consideration whereof, pleaseth it your most Excellent Majesty, that it may be enacted by your Highness, and the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That all and singular Fines, which at any Time hereafter shall be levied or acknowledged before the high Justice of our Sovereign Lord the King, or of his Heirs and Successors, of his County Palatine of *Chester* for the Time being, or before the Deputy or Lieutenant Justice there for the Time being, of any Lands, Tenements or other Hereditaments lying or being within the said County Palatine of *Chester*, which shall be openly read and proclaimed three several Days in the open Sessions, in the Presence of the Justice of the said County Palatine of *Chester* for the Time being, or before the Deputy or Lieutenant Justice there, at the same Sessions that the same Fine shall fortune to be ingrossed, and also that shall be openly read and proclaimed in the Presence of the Justice of the said County Palatine of *Chester*, or before the Deputy or Lieutenant Justice there for the Time being, at the two next General Sessions that shall be holden in the said County Palatine of *Chester*, before the Justice of the said County Palatine, or before the Deputy or Lieutenant Justice there, next after the Levying and Engrossing of such said Fine, at three several Days in either of the said two Sessions, after such Manner and Form as is commonly used in the King's Court of Common Pleas at *Westminster*, shall be of like Force, Strength and Effect in the Law, to all Intents, Constructions and Purposes, as Fines being duly levied with Proclamations before the King's Justices of his Common Pleas be or ought to be of.

2 & 3 Ed. VI. c. 28. The Force of Fines levied of Lands in Cheshire before the High Justice of Chester, or the Deputy or Lieutenant. 34 & 35 H. 8, c. 13.

Extended to Lands, &c. within the County of the City of Chester. 43 Eliz. c. 15, § 3.

The Force of Fines levied before the High Justice of Chester of Lands in Cheshire.

No. 14.

1 Mary, c. 7.—An Act touching Proclamations upon Fines.

'WHEREAS upon Fines levied with Proclamations Doubts have 'of late arisen, by Reason of Adjournment of Terms, in which 'Proclamations should have been made according to the Form limited 'for Proclamations upon Fines by the Statute made in the fourth Year 'of King HENRY the Seventh, and were not by Reason of such 'Adjournments had ne made, according to the Purvey of the same 'Estatute:'

1 Mary, c. 7

No. 14.
1 Mary, c. 7.

Fines levied before the Justices of the Common Pleas shall be of Force notwithstanding Proclamations be not made by Reason of Adjournments

II. Be it therefore enacted, That all Fines, as well heretofore levied as hereafter to be levied, before the Justices of the Common Place, of any Manors, Lands, Tenements or other Hereditaments, whereupon the Proclamations have not or shall not, by Reason of Adjournment of any Term by Writ, be duly made, shall be of as good Force, Effect and Strength to all Intents, Constructions and Purposes, as if any Term heretofore so adjourned, or that at any Time hereafter shall be so adjourned, had been holden and kept from the Beginning to the End thereof not adjourned, and Proclamations therein made according to the Form and Effect of the said Statute.

4 H. 7, c. 24.
18 Ed. 1, st. 4.
27 Ed. 1, st. 1, c. 1.
15 Ed. 2.

Certain Fines to which this Statute shall not extend
Dyer 186.

III. Provided always, That this Act shall not in any wise extend to any Fine heretofore levied of any Manors, Lands, Tenements or Hereditaments, now in Suit, Demand or Variance in any of the Queen's Courts, or whereof any Charters, Evidences or Minuments concerning the same be now in Demand in the Queen's High Court of Chancery; nor to any Fine or Fines heretofore levied of any Manors, Lands, Tenements or Hereditaments, now in Suit, Demand or Variance in any of the Queen's Courts, or whereof any Charters, Evidences or Minuments concerning the same be now in Demand in the Queen's High Court of Chancery; nor to any Fine or Fines heretofore levied of any Manors, Lands, Tenements or Hereditaments, which before the first Day of this present Parliament have been recovered, gotten or obtained, by Reason of any Judgment, Entry, Decree, Arbitrament or other lawful Means, contrary to the Purport, Intent or Effect of any such Fine or Fines thereof heretofore levied.

No. 15.

5 Elizabeth, c. 27.—An Act touching Fines to be levied in the County Palatine of Durham.

5 Eliz. c. 27.

'IN most humble wise shewen unto your most Excellent Majesty 'your true and faithful Subjects and Liegemen the Inhabitants of 'the County Palatine of *Durham*, That whereas by Authority of 'Parliament divers necessary and beneficial Statutes have been made 'for and concerning the levying of Fines with Proclamation, which 'are not only necessary for the Preservation of Quietness and Concord 'amongst your loving Subjects, and for the Avoiding of Strife and 'Contention, but also for the great and perfect Assurance of all such 'Persons to whom such Fines are levied, of any Lands, Tenements 'or Hereditaments; which said beneficial and necessary Estatutes do 'not extend to any Fines to be levied within the said County Palatine 'of *Durham*:' In tender Consideration whereof pleaseth it your most Excellent Majesty, That it may be enacted by your Highness, and the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That all and singular Fines, which at any Time hereafter shall be levied or knowledged before the Justice or Justices of the County Palatine of *Durham* for the Time being, authorised for that Purpose and Cause, of any Lands, Tenements or other Hereditaments, lying or being within the said County Palatine of *Durham*, which shall be openly read and proclaimed two several Days in the open Sessions in the Presence of the Justices of Assize at *Durham*, or one of them for the Time being, at the same Session that the same Fine shall fortune to be ingrossed; and also that shall be openly read and proclaimed in the Presence of the Justices of Assize at *Durham*, or one of them for the Time being, at the two next General Sessions that shall be holden in

Fines levied before the Justices of Assize at Durham.

the County Palatine of *Durham* before the Justices of the same County, commonly called Justices of Assizes at *Durham*, or one of them, next after the levying or ingrossing of such said Fine, shall be of like and of the same Force, Strength and Effect in the Law, to all Intents, Constructions and Purposes, as Fines being duly levied with Proclamations before the Queen's Justices of her Common Pleas at *Westminster* be or ought to be. No 15.

No. 16.

14 Elizabeth, c. 8.—An Act for the Avoiding of Recoveries suffered by Collusion by Tenants for Term of Life, and such others.

'WHERE divers Persons being seised or that have been seised of 'Lands, Tenements and Hereditaments, as Tenants by the 'Courtesy of *England*, Tenants in Tail after Possibility of Issue extinct, or otherwise, only for Term of Life or Lives, or of Estates 'determinable upon Life or Lives, have heretofore permitted and suffered other Persons by Agreement or Covin between them had, to 'recover the same Lands and Tenements and other Hereditaments 'against the same particular Tenants in the Queen's Majesty's Court, 'or have permitted and suffered themselves to be vouched by other 'Persons, by Agreement or Covin between them had, in Recoveries 'suffered of the same Lands, Tenements and other Hereditaments in 'the Queen's Majesty's Court, to the great Prejudice of those to whom 'the Reversion or Remainder thereof hath appertained or ought to 'appertain:'

14 Eliz. c. 8. A Recovery had by the Assent of Parties against Tenant for Term of Life, without the Assent of him in Reversion or Remainder, shall be void, and the Statute of 32 H. 8. c. 31. repealed. Co. Entr. 655, 670. 2 Leon. 60, 63

II. For Remedy whereof be it enacted by the Queen's most Excellent Majesty, with the Assent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by Authority of the same, That all such Recoveries hereafter to be had or prosecuted by Agreement of the Parties, or by Covin as is aforesaid, against any such particular Tenant of any Lands, Tenements or Hereditaments, whereof the same particular Tenant is, or hereafter shall be seised of any such particular Estate as is aforesaid, or against any other with Voucher over of any such particular Tenant, or of any having or that had Right or Title to any such particular Estate or Tenancy as is aforesaid, shall from henceforth, as against such Person or Persons to whom any Reversion or Remainder thereof by Force of any Conveyance or Device before that Time had or made, shall, ought or lawfully may appertain, and against their Heirs and Successors, be clearly and utterly void and of none Effect; any Law or Usage heretofore had to the contrary thereof in any wise notwithstanding.

Recoveries by Tenants for Life by Covin shall be void. Moor, 690. 95. Co. Entr. 1. Cro. El. 562

III. Provided alway, That this Act nor any Thing therein contained shall extend or be prejudicial to any Person or Persons that shall hereafter by good Title recover any Lands, Tenements or Hereditaments, without Fraud or Covin, by Reason of any former Right or Title; but that all and every such Recovery and Recoveries so to be be had or prosecuted upon former Rights or Titles, shall stand and be in like Force, Strength and Effect, as they were before the making of this Act; any Thing herein contained to the contrary in any wise notwithstanding.

Recovery by good Title.

IV. Provided also, That all and every such Recovery and Recoveries to be had or prosecuted of any Lands, Tenements or Hereditaments as aforesaid, by the Assent and Agreement of any Person or Persons to whom any Reversion or Remainder thereof then shall or

A Recovery by the Assent of him in the Reversion or Remainder. 10 Co. 43

No. 16. 8 Eliz. c. 8

ought to appertain (so that the same Assent and Agreement do appear of Record in any Court of our Sovereign Lady the Queen's Majesty, her Heirs or Successors) shall stand and be in like Force, Strength and of like Effect, against such Person and Persons that shall so assent and agree, their Heirs and Successors, as they were before the making of this Act; any Thing herein contained to the contrary in any wise notwithstanding.

V. Be it further enacted by the Authority aforesaid, That one Act made in the two and thirtieth Year of our late Sovereign Lord King Henry the Eighth, entituled, *An Act for the avoiding of Recoveries by Collusion, by Tenants for Term of Life*, shall be from the first Day of *July* next ensuing repealed, and shall no longer stand in Force. Co. Lit. 356. a 362. a.

Repeal of the Statute of 32 H. 8, c. 31, touching Recoveries. *

No. 17.

23 Elizabeth, c. 3.—An Act for the Reformation of Errors* in Fines and Recoveries.

23 Eliz. c. 3. Inrolment of Fines and Recoveries

FOR the Appeasing of Suits, the Avoiding of false Practices, Deceits, Devices and Misdemeanours, and for Helping of Negligences and Misprisons of Clerks and Officers, dangerous to Assurances of Men's Lands and Hereditaments; Be it enacted by the Queen's most excellent Majesty our Sovereign Lady, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That every Writ of Covenant and other Writ, whereupon any Fine heretofore hath been levied or hereafter shall be levied, the Return thereof, the Writ of *Dedimus potestatem* made for the Knowledging of any of the same Fines, the Return thereof, the Concord, Note and Foot of every such Fine, the Proclamations made thereupon, and the King's Silver, and also every original Writ of Entry in the *Post* or other Writ, whereupon any Common Recovery hath been suffered or hereafter shall be suffered or passed, the Writs of *Summon. ad Warrantizandum*, the Returns of the said Originals and Writs of *Summon. ad Warrantizandum*, and every Warrant of Attorney had or to be had, as well of every Demandant and Tenant as Vouchee, extant and remaining or that shall be extant and in being, may upon the Request or Election of any Person, be inrolled in Rolls of Parchment by such Persons, and for such Considerations, as hereafter in this Act shall be mentioned; and that the Inrolments of the same, or of any Part thereof, shall be of as good Force and Validity in Law, to all Intents, Respects and Purposes, for so much of any of them so inrolled, as the same being extant and remaining were or ought by Law to be.

18 Ed. 1, st. 4. 27 Ed. stat. 1, c. 1. 15 Ed. 2. 34 Ed. 3, c. 16. 5 H. 4, c. 14. 1 R. 3, c. 7. 4 H. 7, c. 24. 32 H. 8, c. 36. 1 Mar. Stat. 2, c. 7.

The Validity of the Inrolment.

II. And be it further enacted by the Authority aforesaid, That no Fine, Proclamations upon Fines, or Common Recovery, heretofore had, levied, suffered or passed, or hereafter to be had, levied, suffered or passed, shall be reversed or reversable by any Writ of Error, for false or incongrue *Latin*, Rasure, Interlining, Mis-entring of any Warrant of Attorney, or of any Proclamation, Mis-returning or Not-

For what Errors, Fines and Recoveries are not reversable. Ven. V. 13-211. V. 18–198. Wood Pt. 1.—530 and 595.

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* By Statute 10 & 11 W. III. c. 4, (post Part IV, Title Error,) Writs of Error, for Fines and Recoveries, must be brought within twenty Years after the Fine levied or Recovery suffered, with the Exception in Case of Infancy, &c. In Lloyd v. Vaughan, 2 Str. 1237, it was held, that a Writ of Error, after twenty Years from levying the Fine, &c. is too late, although brought within that Time, after the Fine accrued.

returning of the Sheriff, or other Want of Form in Words and not in Matter of Substance.

No. 17.
23 Eliz. c. 3.

What Person may have Writs of Error to Fines or Recoveries, and in what Cases.

III. Provided always, That this Act, nor any Thing therein contained, shall bar or exclude any Person or Persons from any Writ of Error which shall be had, taken or pursued, within five Years next after the End of the Session of this present Parliament, upon any Fine or Recovery heretofore had or suffered, nor from any Writ of Error which shall be had, taken or pursued upon any Fine or Recovery heretofore levied, knowledged or had, which Fine or Fines, Recovery or Recoveries, or any Part or Parcel of them or any of them, now is, or at any Time before the first Day of *June*, which shall be in the Year of our Lord God one thousand five hundred eighty-two, shall be exemplified under the Great Seal of *England*, at and by the Suit of any Person that is or may be intitled to have or sue any Writ of Error upon any the Fines or Recoveries heretofore passed: Nor to bar any Feme Covert, or any Person within the Age of one and twenty Years, or any Person that is *Non compos mentis*, in Prison or beyond the Seas, of or from any Writ of Error to be had or prosecuted for the Reversing of any Fine or Recovery heretofore passed, levied or suffered, so that such Feme Covert or her Heirs, within seven Years next after that she become sole, and such Person within the Age of one and twenty Years, or his Heirs within seven Years next after he shall come and be of full Age of one and twenty Years, and such Person that is *Non compos mentis*, within seven Years next after he shall become of sane Memory, and in Default thereof the Heirs of such Person that is *Non compos mentis*, within seven Years next after the Death of such Person being *Non compos mentis*; and such Person in Prison or his Heirs, within seven Years next after the same Person shall be at Liberty, and such Person beyond the Seas or his Heirs, within seven Years next after the Return of such Person into this Realm of *England*, or the Death of the said Person, if he shall before his Return die in any foreign Country, shall sue, take and prosecute their Writs of Error, as their Cases severally shall require, for reversing of any the said Fines or Recoveries heretofore passed, levied or suffered.

A Remedy for the Heir where the Ancestor dies pending the Suit.

IV. Provided always, and be it further enacted by the Authority aforesaid, That if any Person or Persons shall, within the Time and Years afore mentioned, commence or sue his or their Writs of Error for the reversing of any the said Fines or Recoveries heretofore passed, which Suit shall fortune to abate by the Death of any the Parties to the same; That then it shall and may be lawful for his and their Heirs, at any Time within one Year next after the said seven Years expired, to have, sue and take their Writ of Error for the Reversing of every such Fine and Recovery: And if such Heir be an Infant within the Age of one and twenty Years, then within one Year next after the full Age of such Infant; any Thing in this present Act contained to the contrary thereof in any wise notwithstanding.

The Day and Year shall be certified of the Knowledge of a Fine or Warrant of Attorney for the suffering of a Recovery.

V. And be it further enacted by the Authority of this present Parliament, That every Person that shall at any Time hereafter take the Knowledge of any Fine or Warrant of Attorney of any Tenant or Vouchee for suffering of any Common Recovery, or shall certify them or any of them, shall, with the Certificate of the Concord or Warrant of Attorney, certify also the Day and Year wherein the same was knowledged: And that no Person that taketh any such Knowledge of any Fine, or Warrant for any Recovery, shall be bounden, or by any Means inforced to certify any such Knowledge or Warrant, except it be within one Year next after the said Knowledge taken: And that no Clerk or Officer shall receive any Writ of Covenant or Writ of Entry, whereupon any Fine or Common Recovery is hereafter to pass,

No. 17.
23 Eliz. c. 3.

unless the Day of the Knowledge of the same Fine and Warrant shall appear in or by such Certificate; upon Pain that every Clerk that shall receive any such Writ, shall forfeit for every Time that he shall so offend, the Sum of five Pounds: And that no Attornment in or upon any Fine be entred upon Record, except the Party mentioned to attorn therein, first have appeared in the Court in Person or by Attorney warranted by the Hand of one of the Justices of the one Bench or the other, or of one Justice of Assize, upon a Writ of *Quid Juris clamat*, *Quem Reditum reddit*, or *Per quæ servitia*, as the Case requireth: And that every Entry of Attornment hereafter to be made, where there shall be no Appearance as afore is said, shall be utterly void and of none Effect, without any Writ of Error or other Means to be used for the Avoiding thereof.

Attornment upon a Fine

The Office of Inrolments of Writs for Fines and Recoveries.

VI. And be it further enacted by the Authority aforesaid, That there shall be for ever one Office for the Inrolment aforesaid, which shall be and continue an Office for ever, called the Office of Inrolment of Writs for Fines and Recoveries: And that the Justices of the Common Pleas for the Time being (other than the Chief Justice) shall have and take the Care and Charge of and for the Inrolments aforesaid, and shall have and enjoy the said Office and the Disposition thereof, and carefully see and look to the Execution thereof: And in Consideration of their Charges, Pain and Travel therein, shall have and take the Sums of Money hereafter following and no more; that is to say, for the Inrolment and Examination of every Fine and the Parts thereof before mentioned, the Sum of six Shillings eight Pence: And for the Inrolment of the said Parts of every Recovery and the Examination thereof, six Shilling eight Pence: And for every Exemplification of the Inrolment of any Fine five Shillings: And for the Exemplification and Returns of every Writ of Entry, Summons ad Warrantizandum, and Warrants, five Shillings: And for the Search of the Rolls of one Year four Pence: And for the Copy of one Sheet of Paper containing fourteen Lines, four Pence: And that the said Justices or one of them shall examine the Inrolments of every such Fine and Parts of Recoveries, and forthwith after Examination thereof, and immediately after the Inrolment of every such Fine and Parts of Recoveries, write his Name that so examineth with his own Hand in the Roll thereof, upon Pain that the said Justices shall forfeit to our Sovereign Lady the Queen's Majesty the Sum of five Pounds, for every Time that they or some or one of them shall make Default of such Examination or Writing of his or their Name as afore is said: And that it shall and may be lawful to and for the Justices of the said Court of Common Pleas, from Time to Time to take Order in all Things that shall be convenient and needful for the Inrolments aforesaid, and upon Examination in the said Court, to assess such Fine or Amerciament upon any Clerk, Sheriff, Deputy, Attorney and other Person, for his and their Misprison, Contempt and Negligence for not doing or misdoing in any Thing, of, in or concerning the said Fines and Recoveries, or any Part of them or either of them, as by the said Justices of the said Court of Common Pleas for the Time being shall be thought meet and convenient: The said Fine and Amerciament to be estreated amongst other Fines and Amerciaments of that Court where such Offence or Misprision shall be committed.

The Fees for Inrolment of Fines and Recoveries.

The Justices may assess Fines for Misprison, Contempt, and Negligence.

VII. And be it further enacted by the Authority of this present Parliament, That the Chirographer of Fines of the Common Pleas for the Time being for ever shall write and make, or cause to be written and made, for every County where her Majesty's Writ runneth, one Table, wherein shall be contained such Contents of every Fine that shall pass in any one Term, as hereafter is mentioned; that is to say, The Name of the County wherein the Tenements mentioned in any Fine be, the Name of every Plaintiff and Deforciant, and of every

...ble containing the Contents of every Fine shall be set up in the Common Pleas & every Assizes.

Manor named in the Fine, if any such be, and of the Towns and Places where the Tenements in such Fine comprised do lie: And the first Day of the next Term after the ingrossing of every such Fine shall fix every of the said Tables upon some open Place in the Court of Common Pleas, and so every Day of the said Term, during the Time of sitting of the said Court: And that the said Chirographer shall deliver to every Sheriff of every County, his Under-Sheriff or Deputy, fair written in Parchment, a perfect Content of the Table so to be made for that Shire, in the Term that shall next before the Assizes be holden in the said County, or else meane between that Term and the said Assizes; And that every such Sheriff to whom such Parchments with the Contents aforesaid shall be delivered, the first Day of the next Assizes after the Delivery thereof unto him, and every Day during the said Assizes, shall fix and set up the same Writing undefaced, in some open Place in the Court where the Justices of the Assize of that County shall sit, and shall see the same to continue there during such Time as the said Justices shall sit there in Court; upon Pain that every Chirographer and Sheriff offending against any Thing in this Act contained, shall forfeit to our Sovereign Lady the Queen's Majesty the Sum of five Pounds, the one Moiety whereof shall be to the Queen's Majesty, her Heirs and Successors, and the other Moiety to him that will sue for the same in any Court of Record; wherein no Essoin, Protection or Wager of Law shall be allowed: and that the Chirographer for the Time being shall have and take for every such Content of every Fine so set down in the T[illegible] aforesaid, four Pence.

No. 17. 23 Eliz. c. 3

The Chyrographer's Fee for writing the Content of a Fine.

'VIII. And forasmuch as upon great Examination it appeareth, 'that divers Fines and Recoveries have been heretofore levied and suf'fered of divers Manors, Messuages, Lands, Tenements and Here'ditaments, which sometime were the Inheritance of *George* some'time Earl of *Kent*, Great-Grandfather to *Henry* now Earl of *Kent*, 'in Use, Possession, Reversion or Remainder, whereunto the said now 'Earl of *Kent* pretendeth Title in Use, Possession, Reversion or Re'mainder, which, if they be erroneous as is pretended, do much vary 'from the general Cause and Mischief for which this Statute meaneth 'to provide:' Be it therefore enacted by the Authority aforesaid, That neither this Statute, nor any Thing therein contained, shall extend to take away any Writ of Error whereunto any Person or Persons is now or hereafter shall be lawfully intituled, for the reversing of the said Fines and Recoveries or any of them, heretofore levied or suffered of any of the said Manors, Messuages, Lands, Tenements or Hereditaments, which late were any Part or Parcel of the Inheritance of the said *George* sometime Earl of *Kent*, in Use, Possession, Reversion or Remainder; any Thing in this Statute contained to the contrary thereof in any wise notwithstanding.

The Earl of Kent's Title.

IX. Provided always, and be it enacted by the Authority aforesaid, That it shall be lawful for the Justices Clerks, authorized by their Warrant, in the said several Offices and Places where the same Records or any of them do or shall remain, to write out or inroll the same Records and every Part thereof, without any Thing to be paid therefore: And that the said Records nor any of them, for the writing out or making the Rolls thereof by the Clerks of the said Justices, otherwise than for the Examination thereof by the Justices, shall be brought or carried forth of the said Offices or Places.

The Records shall not be carried forth of the Office.

X. And be it further enacted by the Authority aforesaid, That none of the Fines or Recoveries heretofore levied, passed or suffered, which shall be exemplified under the Great Seal according to the Form of this Act, shall after such Exemplification had, be in any wise amended. [See 27 El. c. 9. as to Fines, &c. in *Wales*.]

No Amendment of Fines, &c. after Emplification.

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No. 18.

27 Elizabeth, c. 9.—An Act for Reformation of Errors in Fines and Recoveries in the twelve Shires of *Wales*, and Counties Palatine, and for Exemplification of Fines and Recoveries generally.

27 Eliz. c. 9.
23 Eliz. c. 3.

WHEREAS in the Parliament by Prorogation holden at *Westminster* in the three and twentieth Year of her Majesty's Reign that now is, one good and beneficial Statute was made and ordained for the appeasing of Suits, the avoiding of false Practices, Deceits, Devices and Misdemeanors, and for helping of Negligences and Misprisions of Clerks and Officers, dangerous to Assurances of Mens Lands and Hereditaments, intituled, *An Act for the Reformation of Errors in Fines and Recoveries*: Forasmuch as the said Statute, or sundry good and necessary Clauses and Parts thereof, doth not extend to Fines and Recoveries levied, had and suffered in the twelve Shires of *Wales*, that is to say, *Glamorgan*, *Brecknock*, *Radnor*, *Caermarthen*, *Pembroke*, *Cardigan*, *Mountgomery*, *Denbigh*, *Flint*, *Caernarvon*, *Anglesey* and *Merioneth*, the Town and County of *Haverford-West*, and the Counties Palatine of *Chester*, *Lancaster* and *Duresm*:' Be it enacted by our Sovereign Lady the Queen's most excellent Majesty, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That every Writ of Covenant, and other Writ whereupon any Fine heretofore hath been levied or hereafter shall be levied, the Return thereof, the Writ of *Dedimus potestatem* made for the acknowledging of any of the same Fines, the Return thereof, the Concord, Note and Foot of every such Fine, the Proclamations made thereupon, and the King's Silver, and also every original Writ of Entry in the *Post*, or other Writ whereupon any common Recovery hath been suffered, or hereafter shall be suffered or passed, the Writs of *Summon. ad Warrantizandum*, the Returns of the said Originals and Writs of *Summon. ad Warrantizandum*, and every Warrant of Attorney, had or to be had, as well of every Demandant and Tenant as Vouchee, extant and remaining, or that shall be extant and in being, in the Courts of Assizes or Great Sessions within the said twelve Shires of *Wales*, Town and County of *Haverford-West*, and Counties Palatines, or in the Custody of the Officers to whom the Charge of keeping thereof doth appertain, may upon the Request or Election of any Person or Persons be inrolled in Rolls of Parchment by such Persons, and for such Considerations, as hereafter in this Act shall be mentioned: And that the Inrolments of the same, or any Part thereof, shall be of as good Force and Validity in the Law, to all Intents, Respects and Purposes, for so much of any of them so inrolled as the same being extant and remaining were or ought by Law to be.

[Fines] and Recoveries [in] Wales, and th[e] Counties Palatine [...]

For what Errors, Fines and Recoveries [not] reversable.

II. Be it further enacted by the Authority aforesaid, That no Fine, Proclamations upon Fines, or common Recovery, heretofore had, levied, suffered or passed, or hereafter to be had, levied, suffered or passed, in any of the said twelve Shires of *Wales*, Town and County of *Haverford-West*, or Counties Palatine, shall be reversed or reversible by any Writ of Error for false or incongrue *Latin*, Rasure, Interlining, Mis-entring of any Warrant of Attorney, or of any Proclamation, Mis-returning or not returning of the Sheriff, or other Want of Form in Words, and not in Matter of Substance.

III. Provided always, That neither this Act, nor any Thing therein contained, shall bar or exclude any Person or Persons from any

Writ of Error which shall be had, taken or pursued within five Years next after the End of this Session of this present Parliament, upon any Fine or Recovery heretofore had or suffered in any of the Courts aforesaid, nor from any Writ of Error which shall be had, taken or pursued, upon any Fine or Recovery heretofore levied, acknowledged or had in any of the said Courts aforesaid, within any of the said twelve Shires of *Wales*, or Town and County of *Haverford-West*. Which Fine or Recovery, or any Part or Parcel thereof, now is, or at any Time before the first Day of *June*, which shall be in the Year of our Lord God one thousand five hundred eighty-five, shall be exemplified under the Judicial Seal of the said Courts, at or by the Suit of any Person that is or may be intituled to have or sue any Writ of Error upon any the same Fines or Recoveries so heretofore passed; nor from any Writ of Error which shall be had, taken or pursued upon any Fine or Recovery heretofore levied, acknowledged or had in any of the Courts aforesaid, within any of the said Counties Palatine: which Fine or Recovery, or any Part or Parcel thereof, now is, or at any Time before the said first Day of *June*, which shall be in the Year of our Lord God one thousand five hundred eighty-five, shall be exemplified under the Seal of the same County Palatine where the same Fine or Recovery shall be so levied, knowledged or had, at or by the Suit of any Person that is or may be intitled to have or sue any Writ of Error upon the same Fine or Recovery so heretofore passed: nor to bar any Feme Covert, or any Person within the Age of one and twenty Years, or any Person that is *Non compos mentis*, in Prison, or beyond the Seas, or of or from any Writ of Error to be had or prosecuted for the reversing of any Fine or Recovery heretore pssed, levied or suffered in any of the said twelve Shires of *Wales*, Town and County of *Haverford-West*, or Counties Palatine: So that such Feme Covert or her Heirs, within seven Years next after that she become sole, and such Person within the Age of one and twenty Years, or his Heirs within seven Years next after he shall come and be of full Age of one and twenty Years, and such Person that is *Non compos mentis*, within seven Years next after he shall become of *sanæ memoriæ*, and in Default thereof the Heirs of such Person that is *Non compos mentis*, within seven Years next after the Death of any such Person being *Non compos mentis*, and such Person in Prison, or his Heirs within seven Years next after the same Person shall be at Liberty, and such Person beyond the Seas or his Heirs, within seven Years next after the Return of such Person into this Realm of *England*, or the Death of the said Person, if he shall before his Return die in any foreign Country, shall sue, take and prosecute their Writs of Error, as their Causes shall severally require, for reversing of any of the said Fines or Recoveries heretofore passed, levied or suffered.

No. 18.
27 Eliz. c. 9.
In what Cases, and what Persons may have Writs of Error to reverse Fines or Recoveries.

IV. Provided always, and be it further enacted by the Authority aforesaid, That if any Person or Persons shall within the Time and Years aforesaid commence or sue his or their Writs of Error for the reversing of any the said Fines or Recoveries heretofore passed, which Suit shall fortune to abate by the Death of any of the Parties to the same; that then it shall and may be lawful for his and their Heirs, at any Time within one Year next after the said seven Years expired, to have, sue, and take their Writ of Error for the reversing of every such Fine and Recovery; and if such Heir be an Infant within the Age of one and twenty Years, then within one Year next after the full Age of such Infant; any Thing in this present Act contained to the contrary thereof in any wise notwithstanding.

A Remedy for the Heir where the Ancestor dieth pending the Suit.

V. And be it further enacted by the Authority of this present Parliament, That every Person that shall at any Time hereafter take the Knowledge of any Fine or Warrant of Attorney of any Tenant or

No. 18. 27 Eliz c. 9.

The Day & Year of the Knowledge of a Fine or Warrant of Attorney for a Recovery shall be certified

Vouchee, for suffering any common Recovery to be levied, knowledged, passed or had, within any of the said twelve Shires of *Wales*, Town and County of *Haverford-west* or Counties Palatine, or shall certify them or any of them, shall with the Certificate of the Concord or Warrant of Attorney certify also the Day and Year wherein the same was acknowledged: And that no Person that taketh any such Knowledge of any such Fine or Warrant for any Recovery shall be bound, or by any Means inforced to certify any such Knowledge or Warrant, except it be within one Year next after the Knowledge taken.

Attornment.

VI. And that no Clerk or Officer in any of the said twelve Shires of *Wales*, Town and County of *Haverford-west* or Counties Palatine, shall receive any Writ of Covenant, or Writ of Entry, or any other Writ whereupon any Fine or common Recovery is hereafter to pass, unless the Day of the Knowledge of the same Fine and Warrant shall appear in or by such Certificate; upon Pain that every Clerk that shall receive any such Writ, shall forfeit for every Time that he shall so offend the Sum of forty Shillings: And that no Attornment in or upon any such Fine in any of the Courts aforesaid be entred upon Record, except the Party mentioned to attorn therein, first have appeared in the Court in Person, or by Attorney warranted by the Hands of one of the Justices of the same Court, upon a Writ of *Quid Juris Clamat*, *Quem redditum redd.* or *Per quæ servitia*, as the Cause requireth: And that every Entry of Attornment hereafter to be made in any of the Courts aforesaid, wherein there shall be no Appearance as aforesaid, shall be utterly void and of none Effect, without any Writ of Error or other Means to be used for avoiding thereof.

The Office of Inrolments.

VII. And be it further enacted by the Authority aforesaid, That there shall be for ever an Office for the Inrolments aforesaid in every of the said twelve Shires of *Wales*, Town and County of *Haverford-West* and Counties Palatine, which shall be and continue an Office for ever, called the Office of the Inrolments of Fines and Recoveries; and that the Justices of the said twelve Shires of *Wales*, Town and County of *Haverford-West* and Counties Palatine for the Time being, that is to wit, every of them within the Limits and Precincts of their several Authorities and Commissions, shall have and take the Care and Charge of and for the Inrolments aforesaid, and shall have and enjoy the said Office and the Disposition thereof, and carefully see and look to the Execution thereof; and in Consideration of their Charges, Pain and Travel therein, shall have and take the Sums of Money hereafter following, and no more, that is to say, For the Inrolment and Examination of every Fine and the Parts thereof, five Shillings; and for the Inrolment and Examination of every Recovery and the Parts thereof, five Shillings; and for every Exemplification of the Inrolment of every Fine and the Parts thereof, three Shillings Four-pence; and for every Exemplification of the Inrolment of every Recovery and the Parts thereof, three Shillings four Pence; and for the Search of the Rolls for one Year, four Pence; and for the Copy of one Sheet of Paper, containing fourteen Lines, four Pence: And that the Justices of the said Courts of Assizes or Great Sessions for the Time being within the said twelve Shires of *Wales*, Town and County of *Haverford-West*, and Counties Palatine, or any one of them, within the several Limits and Precincts of their said several Commissions, shall examine the Inrolment of every such Fine and Recovery and of the Parts thereof; and after such Examination of the Inrolment of every such Fine and Recovery and of the Parts thereof, shall immediately write his Name that so examineth, with his own Hand in the Roll thereof, upon Pain that the said Justices shall forfeit to our Sovereign Lady the Queen's Majesty, the Sum of forty Shillings for every Time that they

Fees for Inrolments & Exemplifications of Fines and Recoveries.

or one of them shall make Default of such Examination or Writing of his or their Name as is aforesaid; and that it shall and may be lawful for the said Justices or any of them for the Time being, to take Order in all Things that shall be convenient and needful for the Inrolments aforesaid; and upon Examination in the said Courts, to assess such Fine or Amerciament upon any Clerk, Sheriff, Deputy, Attorney or any other Person for his and their Misprision, Contempt and Negligence, for not doing or mis-doing in any Thing, of, in or concerning the said Fines or Recoveries, or any Part of them or either of them, as by the said Justices for the Time being or any one of them shall be thought meet and convenient: The said Fine and Amerciament to be estreated amongst other Fines and Amerciaments of that Court where such Offence or Misprision shall be committed.

No. 18. 27 Eliz. c. 9.

Assessing of Fines for Misprision, Contempt or Negligence.

VIII. And be it further enacted by the Authority aforesaid, That the Exemplification of any such Inrolment of any Fine or Recovery, or of any part thereof, within any of the said twelve Shires of *Wales* or the said Town and County of *Haverford-west*, under the Judicial Seal of the said Shire, Town or County, where such Fine or Recovery was levied, had or passed, and the Exemplification of any such Inrolment of any Fine or Recovery, or of any Part thereof within any of the said Counties Palatine, under the Seal of that County Palatine where such Fine or Recovery was levied, had or passed, shall be of as good Force and Validity in the Law, to all Intents, Respects and Purposes, for such Part and so much of any of them as shall be so exemplified, as the very Original Record itself, being extant and remaining, were or ought by Law to be.

The Exemplification of as good Force as the original Record.

IX. Provided always, and be it enacted by the Authority aforesaid, That it shall be lawful for the Justices Clerks, authorised by their Warrant in the said several Offices and Places where the same Records or any of them do or shall remain, to write out or inrol the same Records and every Part thereof, and that the said Records nor any of them, for the writing out or making the Rolls thereof by the Clerks of the said Justices, shall be brought or carried forth of the said Offices or Places.

Records shall not be carried forth of the Offices.

X. And be it further enacted by the Authority aforesaid, That none of the said Fines or Recoveries aforesaid, heretofore levied, passed or suffered, which shall be exemplified under any Judicial Seal of any of the said Shires of *Wales*, or Town or County of *Haverford-west*, or under the Seal of any of the said Counties Palatine, according to the Form of this Act, shall after such Exemplifications had be in any wise amended.

No Fine or Recovery shall be amended after Exemplification.

XI. [The Heirs of the Lord Powys, Sir Edward Herbert, Vernon.]

XII. [The Earl of Kent his Title.]

No. 19.

31 Elizabeth, c. 2.—An Act for abridging of Proclamations upon Fines to be levied at the Common Law.

'WHEREAS the Statute made in the fourth Year of King HENRY the Seventh hath ordained, That every Fine to be 'levied with Proclamations in the King's Court, afore his Justices of 'the Common Pleas, should be proclaimed in the same Court that 'Term in which it is engrossed, and in three Terms then next follow-'ing, at four several Days in every Term; by Reason whereof they 'ought to be proclaimed four Times in every of the four several

31 Eliz. c. 2.

A Fine levied in the Common Pleas shall be proclaimed four Times, viz. every Term once for four Terms.

No. 19. 31 Eliz. c. 2.

'Terms: And that during the Time of proclaiming of such Fines, 'all Pleas should cease: which to do according to the Statute (considering the Multitudes of Fines now usually levied) would require 'sixteen Days in every Term; and by Reason of the many Causes 'and Suits in that Court, is a far greater Trouble than heretofore hath 'been, so as scarcely one Day in every Term can be spared for the 'proclaiming of Fines:' Be it enacted by the Authority of this present Parliament, That all Fines with Proclamations, from and after the Feast of *Easter* next ensuing, to be levied in the said Court, shall be proclaimed only four Times; that is to say, once in the Term wherein it is engrossed, and once in every of the three Terms holden next after the same ingrossing: And that every Fine proclaimed as aforesaid, shall be of as great Force and Effect in Law to all Intents and Purposes, as if the same had been sixteen Times proclaimed according to the Statute heretofore made.

No. 20.

43 Elizabeth c. 15.—An Act for the levying of Fines with Proclamations of Lands within the County of the City of *Chester*.

43 Eliz. c. 15.

Fines may be levied before the Mayor of the City of Chester, for Lands lying there, &c.

The Effect of the Statute of 2 & 3 Ed. 6, c. 28.

'WHEREAS by an Act made in the Parliament holden at *Westminster* by Prorogation, in the second Year of the Reign of 'our late Sovereign Lord of famous Memory King EDWARD the Sixth, 'intituled, *An Act for Fines with Proclamation in the County Palatine of* Chester, It was enacted, That all Fines which at any Time 'thereafter should be levied or knowledged before the High Justice of 'the said King, or of his Heirs and Successors, of his County Palatine of *Chester*, for the Time being, or before the Deputy or Lieutenant Justice for the Time being, of any Lands, Tenements or other 'Hereditaments, lying and being within the said County Palatine of '*Chester*, which should be openly read and proclaimed in such Manner and Form as in and by the said Act is particularly appointed, 'should be of like Force, Strength and Effect in the Law, to all Intents, Constructions and Purposes, as Fines duly levied with Proclamations before the said King's Justices of the Common Pleas were:

The City of Chester made a County of itself, and divided from the County of Chester.

'II. And forasmuch as the said Act doth not extend to any 'Lands, Tenements or other Hereditaments lying and being within the 'County of the City of *Chester*, (the said City, with the Suburbs and 'Hamlets thereof, and all the Land within the Precinct and Circuit of 'the said City, Suburbs and Hamlets, being long before, by our late 'Sovereign Lord of famous Memory, King HENRY the Seventh, by 'his Highness Letters Patents, bearing Date at *Chester* the sixth Day 'of *April* in the one and twentieth Year of his Reign, divided, exempted, and in all Things separated from the said County of *Chester*, 'and from thenceforth made and appointed to be a County by itself, 'and in itself, distinct and separate from the said County of *Chester*;) 'so that the Inhabitants within the said City, and all others being 'Owners of Lands within the County of the said City, have no Means 'to levy any Fines of such their said Lands in any of her Highness 'Courts of Record.'

Fines levied of Lands within the County of the City of Chester.

III. May it therefore please your most Excellent Majesty, the Lords Spiritual and Temporal, and the Commons of this Realm, in this present Parliament assembled, That it may be enacted by the Authority of the same, That from henceforth it shall and may be lawful to and for all and every Person and Persons whatsoever, upon any ori-

ginal Writ or Writs of Covenant, or any other original Writ or Writs whereupon Fines are or have been usually levied, to be purchased out of her Highness Court of Exchequer within the said County Palatine of *Chester*, returnable before the Mayor of the said City for the Time being, in the *Portmoot*-Court to be holden within the said City, to levy any Fine or Fines of any Lands, Tenements or Hereditaments, lying or being within the said County of the said City of *Chester*, before the Mayor of the said City for the Time being, in the said *Portmoot*-Court, in such Manner and Form, as Fines may be levied by any Laws or Statutes of this Realm before the Queen's Majesty's High Justice of her County Palatine of *Chester*, of Lands within the same County Palatine: And that the Mayor of the said City for the Time being, shall from henceforth have full Power and Authority to receive and record all and every such Fine and Fines: And that all and every such Fine and Fines which shall be so levied, and which shall be openly read and proclaimed before the Mayor of the said City for the Time being, in the said *Portmoot*-Court, once at the same Court-Day that the said Fine or Fines shall be ingrossed, and once at every of the Nine next Court Days of *Portmoot* to be holden within the said City, before the Mayor thereof for the Time being, next after the Levying and Ingrossing of such Fine or Fines, shall be of like Force, Strength and Effect in the Law, to all Intents, Constructions and Purposes, as Fines duly levied with Proclamations, before her Majesty's said High Justice of her County Palatine of *Chester*, of Lands within the same County Palatine, are or ought to be of.

Proclamations of Fines.

'IV. And whereas also the Mayor of the said City for the Time 'being, hath been ever heretofore (for and during all the Time whereof 'the Memory of Man is not to the contrary) accustomed, in all and 'every common Recovery or Recoveries suffered before him in the 'said Court of *Portmoot*, in Absence of the Tenant or Tenants, 'Vouchee or Vouchees in such Recovery or Recoveries, to award and 'send forth of the said Court a Writ, Process or Precept of *Dedimus 'Potestatem*, in the Name of our Sovereign Lady the Queen's Majesty 'that now is, and of her Highness Progenitors, Kings and Queens of '*England* for the Time being, under the *Teste* of the said Mayor 'for the Time being, and sealed with the Seal of his Office, thereby 'authorising those to whom the same was directed or some of them, 'to receive Warrants of Attornies from such Tenant or Tenants, 'Vouchee or Vouchees, to such Attorney or Attornies, as the said 'Tenant or Tenants, Vouchee or Vouchees, would in his or their 'Place or Places constitute for him or them to appear in the said 'Court, and to gain or lose the said Lands, Tenements or Heredita'ments, in or by such Recovery or Recoveries demanded or to be 'recovered:'

A Dedimus Potestatem granted to receive a Warrant of Attorney for the suffering of a Recovery.

V. Be it also enacted by the Authority aforesaid, That upon all and every such original Writ or Writs hereafter to be purchased out of her Highness said Court of Exchequer as aforesaid, for the Levying of any Fine or Fines within the said City of *Chester*, the Mayor of the said City for the Time being, shall for ever hereafter have full Power and Authority to award and send forth such like Writ or Writs, Process or Precepts of *Dedimus Potestatem* as is aforesaid, to any two or more sufficient Persons, authorizing them or some of them, to receive and take the Acknowledgments of such Person or Persons as shall be willing to levy such Fine or Fines, and by reason of Sickness, or other reasonable Impediment, cannot come in Person before the said Mayor for the Time being, to make such Acknowledgment: And that all and every such Fine and Fines, as upon any such Acknowledgment made and certified into the said Court of *Portmoot* shall be hereafter engrossed, recorded and proclaimed in such Manner and Form as is

A Dedimus Potestatem granted by the Mayor of Chester to take the Acknowledgment of a Fine.

No. 20. 43 Eliz. c. 15.

formerly limited and appointed, before the Mayor of the said City for the Time being, in the said Court of *Portmoot*, shall be of like Force and Effect to all Intents, Constructions and Purposes, as if the same Fine or Fines had been personally acknowledged before the said Mayor, and engrossed, recorded and proclaimed in such Manner and Form as in and by this present Act is formerly limited, appointed, expressed and declared.

Where a Fine levied in Chester may be reversed by Writ of Error.

VI. Provided always, and be it enacted, That Fines to be levied by Virtue of this Act shall be subject to be reversed and may be reversed upon Writs of Error to be sued and prosecuted before the said High Justice of the said County Palatine of *Chester*, as other Judgments given by the said Mayor in the said *Portmoot*-Court may be, and have used to be, if there shall be found Error in the same Fine or Fines.

No. 21.

10 & 11 William III. c. 14.—An Act for limiting certain Times, within which Writs of Error shall be brought for the reversing Fines, Common Recoveries and Antient Judgments.

[No Fine or Recovery, &c. shall be reversed, unless Writ of Error be brought in Twenty Years after Fine levied, &c.

Proviso for Infants, &c.

Inserted Part IV. Title Error.]

No. 22.

4 Anne, c. 16.—An Act for the Amendment of the Law, and the better Advancement of Justice.

[Inserted ante Part II. Class I. No. 23. Vi. Sections 15 & 16.]

No. 23.

14 George II. c. 20.—An Act to amend the Law concerning Common Recoveries, and to explain and amend an Act made in the twenty-ninth Year of King Charles the Second, intituled, *An Act for Prevention of Frauds and Perjuries*, so far as the same relates to Estates *pur avtre Vie.*

14 Geo. II. c. 20.

'WHEREAS several Leases have been heretofore, and are hereafter likely to be made, of Honors, Castles, Manors, Lands, Tenements, and Hereditaments, for one or more Life or Lives, under particular Rents thereby reserved, and to be reserved: And whereas procuring Surrenders of such Freehold Leases, or the Tenants thereof to join, in order to make Tenants to the Writs of Entry or other Writs for suffering Common Recoveries, frequently occasions great Trouble, Difficulty, and Expence to Tenants in Tail,

No. 23.

14 Geo. II. c. 20.

'and the same cannot in many Cases be obtained, by Reason of the 'Uncertainty in whom the legal Estate of Freehold under such Leases 'is vested, and also by Reason of the Disabilities and Incapacities of 'such Lessees, or Persons claiming under them, by Means whereof 'Purchases and Family Settlements are often delayed, and may be in 'great Danger of being defeated, if some proper Remedy be not pro- 'vided:' For Remedy whereof, be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same, That all Common Recoveries suffered or to be suffered in his Majesty's Court of *Common Pleas* at *Westminster*, or in any other Court of Record in the Principality of *Wales*, or in any of the Counties Palatine, or in any other Court having Jurisdiction of the same, of any Honors, Castles, Manors, Lands, Tenements, or Hereditaments, without any Surrender or Surrenders of such Lease or Leases, or without the Concurrence, or any Conveyance or Assurance from such Lessee or Lessees, or other Person or Persons claiming under such Lessee or Lessees, in order to make good Tenants to the Writs of Entry, or other Writs, whereupon such Recoveries have been or shall be had or suffered, shall be as valid and effecteal in Law, to all Intents and Purposes whatsoever, as if such Lessee or Lessees, or any other Person or Persons claiming under him, her, or them, had conveyed or joined in conveying, or shall convey, or join in conveying, a good Estate of Freehold to such Person or Persons, as has or have been or shall become, Tenant or Tenants to such Writs of Entry, or other Writs, whereupon such Common Recoveries have been or shall be suffered.

Common Recoveries to be valid, without Surrender of Freehold Leases.

II. Provided always, That nothing in this Act contained shall extend, or be construed to extend, to make any Common Recoveries valid and effectual in Law, unless the Person or Persons intitled to the first Estate for Life, or other greater Estate (in case there be no such Estate for Life in Being) in Reverson or Remainder, next after the Expiration of such Leases, has or have by some lawful Act or Means conveyed or assured, or joined in conveying or assuring, or shall by some lawful Act or Means convey or assure, or join in conveying or assuring, an Estate for Life at the least, to such Person or Persons as has or have been, or shall become Tenant or Tenants to the Writs of Entry, or other Writs, whereupon such Common Recoveries have been or shall be suffered.

What shall make Common Recoveries valid.

III. Provided also, That nothing in this Act contained shall be construed to extend to prejudice the Estate of such Lessee or Lessees, or any Person or Persons claiming any Interest under such Lessee or Lessees.

Proviso.

'IV. And whereas, by the Default or Neglect of Persons em- 'ployed in suffering Common Recoveries, it has happened, and may 'happen, that such Recoveries are not entered on Record, whereby 'Purchasers for a valuable Consideration may be defeated of their just 'Rights;' For Remedy thereof, be it further enacted by the Authority aforesaid, That where any Person or Persons hath or have purchased, or shall purchase for a valuable Consideration, any Estate or Estates in Lands, Tenements, or Hereditaments, whereof a Recovery or Recoveries is, are, or were necessary to be suffered, in Order to compleat the Title, such Person and Persons, and all claiming under him, her, or them, having been in Possession of the purchased Estate or Estates from the Time of such Purchase, shall and may, after the End of Twenty Years from the Time of such Purchase, produce in Evidence the Deed or Deeds, making a Tenant to the Writ or Writs of Entry, or other Writs for suffering a Common Recovery or Common Recoveries, and declaring the Uses of a Recovery or Recoveries,

Evidence to be allowed of Common Recoveries.

No. 23.
14 Geo. II., c. 20.

and the Deed or Deeds so produced (the Execution thereof being duly proved), shall in all Courts of Law and Equity be deemed and taken as a good and sufficient Evidence for such Purchaser and Purchasers, and those claiming under him, her, or them, that such Recovery or Recoveries was or were duly suffered and perfected according to the Purport of such Deed or Deeds, in Case no Record can be found of such Recovery or Recoveries, or the same should appear not to be regularly entered on Record; Provided always, that the Person or Persons making such Deed or Deeds as aforesaid, and declaring the Uses of a Common Recovery or Recoveries, had a sufficient Estate and Power to make a Tenant to such Writ or Writs as aforesaid, and to suffer such Common Recovery or Recoveries.

Proviso.

'V. And whereas it has frequently happened, That the Deeds for making the Tenants to the Writs of Entry or other Writs for 'suffering Common Recoveries, have been lost, or that the Fines or 'Deeds, making the Tenants to the said Writs, have not been levied or executed till after the Judgement given in such Recoveries, and the Writ of Seisin awarded, by Reason whereof, great Doubts have arisen, whether such Recoveries, for Want of proper Tenants to the Writs, are good and effectual in Law;' To prevent such Doubts for the future, and in Order to render Common Recoveries more certain and effectual, be it enacted by the Authority aforesaid, That every Common Recovery already suffered, or hereafter to be suffered, shall, after the Expiration of twenty Years from the Time of the suffering thereof, be deemed good and valid to all Intents and Purposes, if it appears upon the Face of such Recovery, that there was a Tenant to the Writ; and if the Persons joining in such Recovery had a sufficient Estate and Power to suffer the same, notwithstanding the Deed or Deeds for making the Tenant to such Writ should be lost or not appear.

Common Recoveries not disputed in 20 Years, shall be deemed valid.

VI. And be it further enacted by the Authority aforesaid, That from and after the commencement of this Act, every Recovery already suffered, or hereafter to be suffered, shall be deemed good and valid to all Intents and Purposes, notwithstanding the Fine, or Deed or Deeds, making the Tenant to such Writ, should be levied or executed after the Time of the Judgment given in such Recovery, and the Award of the Writ of Seisin as aforesaid, provided the same appear to be levied or executed before the End of the Term, Great Session, Session or Assizes, in which such Recovery was suffered, and the Persons joining in such Recovery had a sufficient Estate and Power to suffer the same as aforesaid (1).

Recovery to be deemed good, though the Deed be executed after the Time.

VII. Provided always, That nothing in this Act contained shall extend, or be construed to extend, to make any such Common Recovery heretofore suffered valid and effectual in Law, which has been avoided by any lawful Act or Means, or which shall hereafter be avoided by Entry duly made on or before the Sixteenth Day of *January*, One Thousand Seven Hundred and Forty, or by Judgment or Decree had or obtained upon some Action or Suit at Law or in Equity, commenced or to be commenced on or before the said Sixteenth Day of *January*, and prosecuted with due Diligence; but every such Common Recovery shall remain and be of such Force and Effect only, as the same would have been if this Act had never been made, and of no other Force or Effect.

What Recoveries not be made valid.

(1) In Goodright v. Rigby, 2 H. B. 46, it was contended, that this Provision did not apply when it appeared by special Verdict that the Conveyance to the Tenant was not made until after the Execution of the Writ of Seisin—although in the same Term but ruled contra, and the Judgment affirmed on Error.—5 T. R. 177.

VIII. Provided, That nothing in this Act contained shall be construed to prejudice or affect any Question of Law, which may arise upon Common Recoveries not remedied or intended to be remedied by this Act; but all such Common Recoveries shall remain and be of such Force and Effect, as the same would have been if this Act had never been made, and of no other Force or Effect.

No. 23.
14 Geo. II. c. 20.
Proviso.

IX. And whereas by an Act made in the Twenty-ninth Year 'of the Reign of King CHARLES the Second, intituled, *An Act for 'Prevention of Frauds and Perjuries*, amongst other Things, it is 'enacted, That Estates *pur auter Vie*, whereof no Devise shall be 'made, should, in Case there should be no special Occupant thereof, 'go to the Executors or Administrators of the Party that had the 'Estate thereof by Virtue of the Grant, and should be Assets in their 'Hands. And whereas Doubts have arisen, where no Devise has 'been made of such Estates, to whom the Surplus of such Estates, 'after the Debts of such deceased Owners thereof are fully satisfied 'shall belong;' Be it enacted by the Authority aforesaid, That such Estates *pur auter Vie*, in Case there be no special Occupant thereof, of which no Devise shall have been made according to the said Act for Prevention of Frauds and Perjuries, or so much thereof as shall not have been so devised, shall go, be applied, and distributed, in the same Manner as the Personal Estate of the Testator or Intestate (2)

29 Car. II. c. 3.

Surplus of Estates pur auter Vie, how to pass, if not devised.

(2) See Notes on the Subject of this Section subjoined to Statute 29 Charles II. c. 3, ante Class I. No. 17.

No. 24.

32 George II. c. 14.—An Act for the more regular and easy collecting, accounting for, and paying, of Post Fines, which shall be due to the Crown, or to Grantees thereof under the Crown; and for the Ease of Sheriffs in Respect to the same.

'WHEREAS great Trouble and Expence arise in the Execution 'of the Office of Sheriff, by the present Method of collecting, 'accounting for, and paying of Post Fines, which become due to the 'Crown, or to the Grantees or Proprietors thereof under the Crown, 'by reason that the Persons from whom such Post Fines are due, are 'frequently unknown to the Sheriff, and reside out of his County; 'and the Parishes, Towns, Precincts, or Places in which the Lands 'lie, whereof the Fine was levied, are frequently misnamed, whereby 'the Sheriff is unable to find out the same. And forasmuch as the 'Sheriff of every County, on the passing his Accounts, is obliged to 'pay to the Crown, before he can obtain his *Quietus*, the several and 'respective Post Fines charged upon him, many of which he is never 'able to collect in and receive, to his manifest Loss and Detriment; 'for Remedy whereof, and for the Ease of Sheriffs in the Execution 'of their Office; May it please your Majesty that it may be enacted;' And be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That on all and every Writ or Writs of Covenant which, from and after the first Day of *Trinity* Term One Thousand Seven Hundred and Fifty-nine, shall be sued out for the passing of Fines in his Majesty's Court of *Common Pleas* at *Westminster*, the Officer or Officers, whose Duty it is to set and indorse the Prefine payable there-

32 Geo. II. c.

Preamble.

No. 24. 32 Geo II. c. 14.

on, shall also at the same Time, set the usual Post Fine, and indorse the same on the Back of the said Writ or Writs, together with his or their Name or Names, or Mark of Office thereto, in the like Manner as the same are now indorsed or stampt at the Office called *The King's Silver Office*; which said Post Fine or Post Fines shall be forthwith paid to the Receiver of Prefines at the Alienation Office, for the Time being, together with the Sum of four Pence, as his Fee for receiving the same, instead and in lieu of the Fee of four Pence charged on Lands, Tenements and Hereditaments, and payable to Sheriffs, Bailiffs, and others, on discharging the same, by Virtue of the Act of the third Year of his late Majesty King GEORGE the First, intituled, *An Act for the better regulating the Office of Sheriffs; and for ascertaining their Fees and the Fees for suing out their Patents and passing their Accounts*; which said Fee of four Pence, by the said Act granted, from and after the said first Day of *Trinity* Term One Thousand Seven Hundred and Fifty-nine, shall cease and determine; and such Receiver shall indorse upon the Back of every such Writ or Writs of Covenant, one particular or certain Mark of Office, in like Manner as is now used by him on the Receipt of Prefines at the Alienation Office, together with the Name of such Receiver, and the Sum of Money which shall be by him received as the Post Fine due thereon; which Mark and Indorsement of such Receiver, shall discharge the Manors, Lands, Tenements, Rents, Commons and Hereditaments, comprised in the said Writ or Writs of Covenant, and the Cognizee or Cognizees named therein.

Post Fine to be indorsed on Back of the Writ, by the Officer who is to set the Prefine together with his Name or Mark of Office: both Fines to be paid together.

II. And be it further enacted by the Authority aforesaid, That the Officer or Clerk of the King's Silver Office, or his Deputy, from and after the said first Day of *Trinity* Term One Thousand Seven Hundred and Fifty-nine, shall continue to enter every such Fine or Fines upon Record, in the Way hitherto used in the passing of Fines, and make thereof the same Entries, and shall put thereon the same Indorsements, with the same Stamp or Mark, and in the like Manner, as has hitherto been the constant Usage and Practice of the said Office in passing of Fines; and that no Fine, until the same shall be stampt and marked with the Sum to which the Post Fine amounts as aforesaid in the said King's Silver Office, shall be deemed a Fine valid and effectual in Law.

Clerk of the Silver Office to enter & mark the Fines.

III. 'And whereas no Prefine is payable on any Writ of Covenant 'where the Lands and Tenements contained therein are under the 'yearly Value of five Marks; but a certain Sum of six Shillings and 'eight Pence hath been antiently set and payable to the Crown on 'every such Writ of Covenant, as and for the King's Licence being 'granted to the Parties in such Writ of Covenant named to accord;' Be it therefore further enacted by the Authority aforesaid, That from and after the said first Day of *Trinity* Term, in all Cases where no Prefine shall be payable on any Writ of Covenant, the Officer or Officers at the said Alienation Office, whose Duty it is to set and indorse the Prefine on every Writ of Covenant on which a Prefine is payable, shall set on every Writ of Covenant brought to the said Alienation Office, on which no Prefine shall be payable, a Post Fine of six Shillings and eight Pence, as hath been antiently usually put, at the said King's Silver Office, on every Writ of Covenant on which no Prefine was payable; and shall indorse such Post Fine of six Shillings and eight Pence on every such Writ of Covenant, together with his or their Name or Names, and Mark of Office, in the like Manner as it hath been usual to indorse such Writs of Covenant at the said Alienation Office; and every such Post Fine of six Shillings and eight Pence shall be paid to the said Receiver of the said Alienation Office before the Writ of Covenant on which no Prefine is payable shall be passed

Where no Prefine is payable on the Writ, the Officer at the Alienation Office is to put a Post Fine of 6s 8d. thereon, &c.

No 24.
32 Geo II. c. 14

at the said Alienation Office; and the said Receiver, on Payment of the said six Shillings and eight Pence, shall indorse on and mark every such Writ of Covenant, in like Manner as other Writs of Covenant are by this Act before directed to be indorsed and marked by such said Receiver.

Clerk of the Silver Office to receive no Writ where the Post Fine has not been paid

IV. And be it further enacted by the Authority aforesaid, That the Officer or Clerk of the King's Silver Office, or his Deputy, from and after the said first Day of *Trinity* Term One Thousand Seven Hundred and Fifty-nine, shall not receive any Writ or Writs of Covenant, unless it shall appear by the Mark and Indorsement of such Receiver as aforesaid, that the Post Fine has been paid thereon.

If the Writ shall be prevented from passing several Offices, the Receiver to repay the Post Fine to the Cognizee.

V. Provided nevertheless, That if after the Payment of such Post Fine or Post Fines as aforesaid, the said Writ or Writs of Covenant shall, by the Death of any of the Parties named therein, or for any other Cause whatsoever, be prevented or hindered from passing through the several other Offices, so as the said Fine or Fines is or are not, or cannot be compleated; that then and in every such Case, the said Receiver shall repay to the Cognizee or Cognizees, in every such Writ or Writs of Covenant, his, her or their Attorney or Agent, on their producing and filing with him the said Writ or Writs of Covenant, all and every such Sum and Sums of Money as shall have been before by him received thereon as and for the Post Fine or Post Fines; and such Writ or Writs of Covenant so remaining filed with such Receiver, shall be and is hereby declared to be a sufficient Discharge to such Receiver, for such Sum or Sums of Money as he shall so repay as aforesaid.

Re[illegible] ter into Re[illegible] zance

VI. And be it further enacted by the Authority aforesaid, That every such Receiver as aforesaid, before he takes upon him the Execution of his said Office, shall enter into a Recognizance before one of the Barons of his Majesty's Court of *Exchequer*, to his Majesty, his Heirs and Successors, with one or more Surety or Sureties, as shall be thought proper by such Baron, in the penal Sum of five thousand Pounds, conditioned for the due and faithful Execution of the said Office, and to pay unto every respective Sheriff of every County, City, and Town in *England*, having a Sheriff or Sheriffs, or his Under Sheriff or lawful Attorney, on his or their producing to such Receiver, his Clerk or Agent, at his public Office, the *Quietus* of the Sheriff for whom Payment is required, the Sum Total of the Post Fines which shall be contained in such respective *Quietus*, and wherewith such Sheriff shall have been charged in his Account in the Exchequer; and also to pay unto all and every the Lords of Liberties, Proprietors or Grantees of Post Fines under the Crown, or to their lawful Bailiffs or Attorney, upon their producing respectively unto the said Receiver, his Clerk or Agent, at his public Office, the respective Schedules of the foreign Apposer, or Clerk of the Estreats of the said Court of *Exchequer*, the several and respective Sums of Money in such Schedules contained, and set over as Post Fines to such Lords, Proprietors, or Grantees respectively; which said Surety, or Sureties, shall respectively justify him or herself, before the Baron taking such Recognizance, to be worth the Sum of two thousand five hundred Pounds, over and besides all just Debts and Incumbrances; and every such Recognizance shall, with all convenient Speed, after the taking thereof, be transmitted by the Baron who shall take the same to the King's Remembrancer of the Court of *Exchequer*, there to be filed and remain on Record; and such Receiver, and his said Sureties, shall in all Cases be respectively liable to the Amount of such penal Sum, to make Satisfaction to each respective Sheriff, and also to the respective Lords of Liberties, Proprietors, or Grantees, for all and every Post Fine and Post Fines which shall be received by such Receiver,

No. 24. 32 Geo. II. c. 14.

his Deputy or Agent on any Fine levied of any Lands, Tenements, Rents, or Hereditaments, within their respective Sheriffwicks or Liberties; and in case of the Death or Insolvency of any of the said Sureties, at any Time after the entering into such Recognizance as aforesaid, then one or more Surety or Sureties in the Room or Place of him, her or them, so dying or becoming insolvent, as aforesaid, shall, within the Space of one Month then next, enter into such Recognizance as the said Surety or Sureties so dying or becoming insolvent had entered into, and justify himself, herself or themselves, in like Manner as is before directed in this Act; in default of which the said Office shall immediately cease, determine, and be utterly void.

Time of Receiver's Attendance at Office, and Delivery of the Writs.

VII. And be it further enacted by the Authority aforesaid, That from and after the said first Day of *Trinity* Term, every such Receiver, his Clerk or Agent, shall daily, (*Sundays* and Holidays excepted) attend at the said Alienation Office from nine of the Clock in the Morning till one of the Clock in the Afternoon, and shall deliver back every such Writ of Covenant as aforesaid, when the same shall be called for at the said Alienation Office, during the Office Hours herein before appointed for such Receiver's Attendance at the said Office, within two Days after every such Post Fine shall be paid thereon respectively, unless the last of the said two Days shall happen to be a *Sunday* or Holiday, and then on the next succeeding Day.

Receiver to pay the Post Fines to the Sheriff, on producing his Quietus, &c.

VIII. And be it enacted by the Authority aforesaid, That every such Receiver as aforesaid shall pay unto every Sheriff of any of the Counties, Cities, or Towns of *England*, his Under Sheriff or lawful Attorney, on his producing his *Quietus*, the several and respective Sums of Money in the said *Quietus* mentioned to have been by him accounted for in the Receipt of his Majesty's Exchequer, on the passing of his Accounts as and for Post Fines of his Majesty's Court of *Common Pleas* at *Westminster*; and also in like Manner pay unto all and every Lords of Liberties, Proprietors or Grantees, under the Crown, of such Post Fines, or his or their Bailiff or lawful Attorney, upon their producing the Schedules of the foreign Apposer, or Clerk of the Estreats of the said Court of *Exchequer*, the several and respective Sums of Money in the said Schedules set and allowed to them as Post Fines; the said Receiver deducting and retaining to himself, but of every twenty Shillings which he shall so pay, the Sum of six Pence only, for his Trouble and Attendance on the due Execution of this Act, and so in proportion for any greater or less Sum, and which he is hereby authorized and impowered to deduct and retain to his own Use; but neither the said Receiver, nor any other Person or Persons whatsoever, for his or their Attendance on such Receiver, shall charge or be allowed any Fee or Reward for or on the Account of doing any Thing by this Act directed, except the said Fees to such Receiver in this Act particularly mentioned and expressed.

Penalty of forging the Receiver's Hand or Mark.

IX. And be it further enacted by the Authority aforesaid, That if any Person or Persons from and after the said first Day of *Trinity* Term one thousand seven hundred and fifty-nine shall make, forge, or counterfeit, or cause or procure to be made, forged, or counterfeited, the Mark or Hand of such Receiver as aforesaid, whereby such Receiver, or any other Person or Persons, shall or may be defrauded, or suffer any Loss thereby; every Person or Persons convicted of such Offence, shall be deemed guilty of Felony, and shall suffer Death as a Felon without Benefit of Clergy.

Receiver made subject to the Order of the Court, &c.

X. And be it also enacted by the Authority aforesaid, That every such Receiver refusing or neglecting to pay such Post Fines to the said respective Sheriffs, Lords of Liberties, Proprietors, or Grantees under the Crown, or their lawful Attornies, or Bailiffs, shall be subject to such Order as the Barons of the said Court of *Exchequer* of the De-

No. 24.
32 Geo. II. c. 14.

gree of the Coif shall make for the Payment of the same; and the said Receiver, and every Person or Persons who shall be guilty of any wilful Default, Extortion, or Misdemeanor, contrary to the true Intent and Meaning of this Act, shall forfeit and pay to the Party aggrieved treble Damages with full Costs, which shall and may be ordered and awarded by the Barons of the Court of *Exchequer*, upon Application made to, and on due Proof thereof made before them, in such summary Way and Method as to them shall seem meet; provided every such Application or Prosecution be made within the Space of two Years next after any such Offence shall have been committed, and not otherwise, and such Orders of the said Court of *Exchequer*, so to be made as aforesaid, shall have the same Force, Virtue, and Effect, and the Observance thereof shall be inforced by such Ways and Means, as any other Orders of the same Court.

Limit. of Prosecuti

Orders of the Court inforced.

XI. Provided always, and be it enacted by the Authority aforesaid, That this Act shall not any way alter the Operation of any Fine which after the said first Day of *Trinity* Term one thousand seven hundred and fifty-nine, shall be levied in the Court of *Common Pleas* at *Westminster*, or the Course of passing Fines in that Court, otherwise than is in and by this Act directed.

Operation of Fines in the Court of Common Pleas, not altered by this Act.

XII. And be it further enacted by the Authority aforesaid, That this Act shall be deemed and taken to be a publick Act, and shall be judicially taken Notice of as such, by all Judges, Justices, and other Persons whatsoever, without specially pleading the same.

Publick Act.

No. 25.

47 George III. Sess. 2. c. 8.—An Act concerning Common Recoveries suffered in Copyhold or Customary Courts by Attornies. [17th *July* 1807.]

47 G. III. Sess. 2.

'WHEREAS it is expedient that Persons who can now suffer 'Common Recoveries of Copyhold or Customary Tenements 'in Person but not by Attorney, should be enabled to suffer the same 'by Attorney as well as in Person:' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall and may be lawful for every Person not being under Coverture, and for every Feme Covert; (such Feme Covert being solely and secretly examined by the Lord or Lords, Lady or Ladies of the Manor or Manors whereof the Copyhold or Customary Tenements, a Common Recovery or Common Recoveries of which is or are proposed to be suffered, shall be holden, or by his, her, or their Steward or Stewards, or by the Deputy or Deputies of such Steward or Stewards,) to appoint any Person or Persons to be his, her, or their Attorney or Attornies for the Purpose of surrendering the Copyhold or Customary Tenements, a Common Recovery or Common Recoveries of which shall be proposed to be suffered, to the Use of any Person or Persons, to make him or them Tenant or Tenants to the Plaint; and also to appoint any other Person or Persons to appear for the Person or Persons so appointing as Vouchee or Vouchees, and to enter into the usual Warranty, and to do all other lawful and necessary Acts for the suffering and perfecting of such Common Recovery or Common Recoveries respectively, and to direct the Demandant or Demandants

Persons may appoint Attornies, &c. for surrendering Copyholds, &c. of which Common Recoveries are intended to be suffered, &c.

No 25.
17 Geo. III. c 8

in such Common Recoveries respectively to surrender the Tenements so recovered, when or after such Recovery or Recoveries shall be suffered and perfected, to such Uses as shall be declared in the Instrument by which such Attorney or Attornies shall be respectively appointed; and that the Surrender and Surrenders, and Common Recovery and Common Recoveries which shall be had, acknowledged, and suffered as aforesaid, shall have the like Effect but no other, as such Surrender and Surrenders and Common Recoveries would have had if the Party or Parties who shall acknowledge such Surrender or Surrenders, and suffer such Common Recovery or Common Recoveries by Attorney, and give such Directions as aforesaid, had appeared in Court in his, her, or their Person or respective Persons, and acknowledged the said Surrender or Surrenders, and suffered the same Recovery or Recoveries, and had joined in the Surrender or Surrenders to be made by such Demandant or Demandants.

Part II. Class XI.

WILLS.

No. 1.

32 Henry VIII. c. 1.—The Act of Wills, Wards, and Primer Seisins, whereby a Man may devise two Parts of his Lands.*

'WHERE the King's most Royal Majesty in all the time of his most gracious and noble Reign hath ever been a merciful, loving, benevolent and most gracious Sovereign Lord, unto all and singular his loving and obedient Subjects, and by many times past hath not only shewed and imparted to them generally by his many, often, and beneficial Pardons heretofore by Authority of his Parlia- 32 H. VIII. c. 1. 2 Roll 383, 425, 427.

* In adverting to the System of the Law at present existing with Respect to testamentary Dispositions, I shall take the Liberty of suggesting certain legislative Alterations which I conceive would tend materially to its Amelioration and Improvement.

By the Abolition of the Feudal Tenures, the Restrictions which are the principal Objects of this and the following Statute, have become inoperative; and the Power of a Disposition by Will of Freehold Lands of Inheritance, is general and undefined.

It is agreed that Copyhold Lands† are not within the Statute of Wills, and that they can only be the Subject of Devise through the Medium of a Surrender to the Use of the Will, or in consequence of those Rules of Courts of Equity by which the Want of a Surrender is in certain Cases supplied, and upon which it would be foreign to the present Purpose to enlarge.—The Power of devising Copyholds through the Medium of a Surrender, was originally wholly dependent upon special Custom; but in Pike v. White, 3 Bro. Ch. 286, it being alleged, that according to the Custom of a Manor, Copyhold Lands holden thereof, could not be surrendered to the Use of the Will of the Tenant, and were not devisable by Virtue of any Custom subsisting in such Manor, Lord Thurlow said that it was totally impossible to say that a Copyhold surrendered to the Use of a Will should not pass thereby; and therefore he must declare the Custom, if there were such an one, bad.

† I have thought it eligible to retain this Part of the Note notwithstanding the recent Alteration of the Law. See the last Number of this Class.

This Opinion is certainly very conducive to public Convenience, with Regard to its Effects; but it seems very difficult to support it upon the Principle of mere legal Reasoning; or to discover upon what correct Principles a Custom according with the general Common Law, and not affected by any legislative Provision, could be controuled or superseded by mere judicial Authority.

Certain customary Estates are still not susceptible of Devise, otherwise than by the Medium of Deeds of Trust; and which in some instances must be renewed annually, or after certain periodical Intervals, so that if the Time of renewing them is suffered to elapse, or the Testator falls into a state of Incapacity, the Devise becomes inoperative.

In Church v. Munday, 12 Ves. 426, and on Appeal, 15 Vesey, 396, the Question arose amongst others, Whether the Reversion or Remainder of a

No. 1.
32 H. VIII. c 1.

ment granted, but also by divers other Ways and Means many great and ample Grants and Benignities, in such wise as all his said Subjects been most bounden to the uttermost of all their Powers and Graces by them received of God, to render and give unto his Majesty their most humble Reverence and obedient Thanks and Services, with their daily and continual Prayer to Almighty God, for the con-

Dyer 292.
2 Anders. 206.

Copyhold Expectant on an Estate Tail, could be surrendered to the Use of a Will?—The Lord Chancellor directed Inquiries; but after stating Lord Thurlow's Opinion above cited, said, the Court would hold that there might be a Surrender to the Use of the Will, though no Instance could be found upon the Records of the Manor; or if there could be no such Custom, there must be some Mode of Disposition by Deed, as in the Case of customary Freeholds, the Want of which the Court would supply.

These Cases shew the strong Opinion of the Courts, and which certainly are in Accordance with the general Feelings of Mankind, in Favour of extending the Right of testamentary Disposition; and it cannot be pretended that any real Benefit results from the Necessity of the circuitous Course of a Surrender or Deed with Respect to Copyhold or Customary Estates, and the Invalidity of Wills for Want of those Ceremonies, is a Disappointment of the Intention of a Testator, upon which his general Arrangements are founded. I conceive that much Advantage, unaccompanied with any Inconvenience, would result from a general Provision that all Lands and Hereditaments of whatever Tenure, might pass by Devise, with proper Regulations for preserving to the Lords the Emoluments to which they are entitled in Respect of the Acts, by which, according to the existing Law, such Dispositions are rendered valid.

The Provisions of the Statute of Frauds, 29 Car. II. c. 3. with Respect to the Attestation of Wills of Real Estates, has been adverted to in commenting upon that Statute, in a former Part of this Collection, accompanied by some Observations on the Inconvenience of a certain Mode of Attestation being necessary in Respect of certain Descriptions of Property, and not universally so; and in Consequence of which, the same general Plan of Disposition is partially supported, and partially defeated; whereas it must always be desirable that the same entire System of Disposition should be either wholly valid or wholly void, which has frequently been the Subject of judicial Observation; and it certainly would be beneficial to apply one and the same Rule of Attestation to every Subject of testamentary Disposition, and to extend the present Regulations to the Disposition of Personal Estates, and to the Devise of Copyholds, when such Devises are in other Respects valid, and to the testamentary Execution of Powers.

One of the leading Features of the present Statute is that the testamentary Power only attaches to Lands belonging to the Testator at the Devise, either by actual Seisin, or a vested Right; and that no Disposition can be made by Will of Freehold Property to be afterwards acquired. Whether it might not be beneficial to give the same general Right of testamentary Disposition over future Acquisitions of Freehold Property, which subsists with Respect to Personality, I do not think it material to enquire, as I apprehend that the Balance of public Convenience on either Side would not be very considerable.

It was established previous to the Statute of Wills, that a Devise by a Joint-Tenant of Lands devisable by Custom, was void;—and it is clear that a Will by a Joint-Tenant who survives, or who afterwards severs the Joint-Tenancy, is of no Effect. See Swift v. Roberts, 3 Bur. 1488. 1 Black. Rep. 476, and the Statute 34 & 35 Henry VIII. But a Devise made by Tenant in Tail, after making Tenant to the Præcipe, and before suffering the Recovery thereon, is good. Selwin v. Selwin, 1 Black. Rep. [illegible]—251. 2 Bur. 1131.

And a Possibility, by Virtue of an executory Devise, or a springing Use, is devisable. Roe v. Jones, 1 H. Bl. Rep. 30. 3 T. Rep. 88.

It is a general Rule, that a Right of Entry is not devisable, the Authorities for which are fully expounded in the Case of Goodright v. Forrester, 8 East, 552, in which it was held that the Fine of Tenant for Life divested the Estate of Tenant in Fee in Remainder, and turned it to a Right which was not devisable; and Lord Ellenborough, after delivering the Opinion of the Court to that Effect, observed that whatever Mischief or Hardship might attend the

'tinual Preservation of his most Royal Estate in most Kingly Honour No 1.
'and Prosperity; yet always his Majesty being repleat and endowed 32 H. VIII. c.
'by God with Grace, Goodness and Liberality, most tenderly considering, that his said obedient and loving Subjects cannot use or 'exercise themselves according to their Estates, Degrees, Faculties 'and Qualities, or to bear themselves in such wise, as that they may

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Decision of the Case, or might be expected to arise from the Application of the same Rule to other Cases, it was an Inconvenience which could, if their Judgment was well founded, only be remedied by positive Law;—and that the Propriety of applying such a Remedy whereby the same Rights of Entry and Action which belonged to the Heir, might be extended to the Devisee, was a Question particularly for the Consideration of the Legislature. Upon the Case coming before the Court of Exchequer Chamber, upon Writ of Error, 1 Taunton, 578, it was decided upon the Ground of Non-claim, as to which see Note to Stat. 4 H. 7. c. 24. ante Class X. No 7. the Court declining to give any Opinion upon the Point decided in the Court of King's Bench: as to which, Mansfield, Ch. J. observed, that since it would be unnecessary to decide on any of the Points argued in the Court of King's Bench, it need not be inferred or supposed that the Judgment of that Court was in any Respect impeached by the Decision: the Court would not at present give Judgment upon those Points, because it would first be necessary minutely to examine the old Authorities, which, upon the present Grounds of their Decision, it would be superfluous to do. If the Doctrine of Estates arising by Disseisin was such as had been stated by the Defendant's Counsel, they must lament that the Law was such. Our Ancestors got into very odd Notions on these Subjects, and were induced by particular Causes to make Estates grow out of wrongful Acts. The Reason was the prodigious Jealousy which the Law always had of permitting Rights to be transferred from one Man to another, lest the poorer should be harrassed by Rights being transferred to more powerful Persons. It is evident that the Reasons of this Principle of the Law are not applicable to the present State of Society; and the Opinions which have been cited seem sufficient Authority to shew that it might be desirable to extend the Power of Devise to all Interests which, without such Devise, would be descendible to the Heir; and at any Rate the Interests of Justice demand that the testamentary Power of the Person in Remainder should not be affected by the wrongful Acts of the particular Tenant.—See some Observations upon this Subject in the Notes to the Statute of Uses, 27 H. 8. ante Class IX. No. 3.

But perhaps there are few settled Doctrines of Law, to which it would be more desirable to apply the Correction of legislative Authority, than that by which a Devise is rendered inoperative, in consequence of a subsequent Conveyance of the Estate, contrary to the admitted Intentions of the Testator.

It would be superfluous to enter into the Detail of a Subject which has, within a recent Period, been so fully elucidated. The Positions, that a Devise is annulled at Law by a subsequent Conveyance of the Estate, although the Testator by the Effect of the Statute of Uses continues seised of the ancient Estate, and even although the Conveyance is inoperative for Want of legal Requisites, and that when there is a Revocation at Law a Court of Equity will not controul the legal Operation of the Conveyance, except in certain definite Cases, are fully established as settled Rules of Property. The History of the Law upon this Subject, and the Grounds and Principles upon which it is founded, are fully stated in the Cases of Brydges and the Duchess of Chandos, 2 Ves. jun. 417, 7 Bro. P. C. 505—Goodtitle v. Otway, 1 Bos. & P. 576, 7 T R. 399—S. C. in Equity by the Name of Cave v. Holford, 3 Vesey, 682, 7 Bro. P. C. 593. See also Harmood v. Oglander, 6 Ves. 199, 8 Ves. 106

It is very unnecessary to enter into the Consideration of the technical Principles upon which the Law in this Respect is founded, or to take Part either with those who charge the leading Cases with shocking Absurdity, or with those who consider the Doctrine as necessarily emanating from the essential Principles of the Subject. The Question for Consideration, as a Matter of legislative Interference, is, whether it would be more conducive to Utility that the Law should continue as it is, or that it should be reformed. The Disappointment of the Intention of the Testator is an undisputed Ingredient in the

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32 H. VIII. c. 1.

'conveniently keep and maintain their Hospitalities and Families, nor 'the good Education and bringing up of their lawful Generations, 'which in this Realm (Laud be to God) is in all Parts very great and 'abundant, but that in manner of Necessity, as by daily Experience 'is manifested and known, they shall not be able of their proper 'Goods, Chattels and other moveable Substance, to discharge their

Question; and the Benefit, if such there is, from permitting it to continue, results from the contingent Advantage derived by the Heir, in Consequence of the Ignorance of his Ancestor of a technical Rule, the Knowledge of which would immediately be followed by the necessary Provisions for preventing such Advantage from being obtained. Mr. Justice Rooke, in the original Decision of Goodtitle and Otway, and Mr. Justice Ashurst, upon the Writ of Error, seem to think, that the Hardship of the Case is sufficiently disposed of, by holding, that if Individuals will be so negligent as not to apply to those who have the Reputation of being the best versed in the Science of the Law, they are themselves the most to blame; and Lord Kenyon, in a Style of general Declamation which would apply to any Alteration of the Law upon any Subject, observes, that those who are confident of their superior Abilities may perhaps fancy that they could erect a new System of Laws less objectionable than that under which they live, but he had not that Confidence in his, and was satisfied by the Decisions, and Series of Decisions, of great and learned Men on the Rules of Law, under which the landed Property of this Country is now held. If the Observation is intended to apply only to the Exercise of judicial Authority, it is certainly not otherwise exceptionable, than as is a mere solemn Declaration of what no Person conversant with the Subject would ever think of bringing into Dispute; but if understood as importing, that "the Law is so and therefore it ought to be so," it involves a Principle which, if it had always been acted upon, and formed an essential Part of the *Wisdom of our Ancestors*, would have superseded the Discussion of the Question, by preventing altogether the Innovation on the Common Law, which took Place by the Enactment of the Statute of Wills.

Lord Kenyon, in deciding, as he was bound to do, in Favour of the Invalidity of the Will, which was the Subject of the Case of Goodtitle v. Otway, observed, that if he could have indulged his Wishes, he could have wished to give Effect to the Intention of the Testator. Lord Eldon, speaking in Harmood v. Oglander of a Consultation with Serjeant Hill respecting the same Will, said, that he was desirous, as every Man must be, to support that Will as not revoked. Lord Chief Justice Eyre, whose Opinion in one Part of the Case was different from that of the other Judges, prefaced the Delivery of it by observing, that though the Doctrine of Revocation had been carried to a very inconvenient Extent, in Consequence of the many Wills that had been cruelly disappointed, and many Families greatly distressed, agreed, that Judges were not to be wiser than the Law—and that it was their Duty to declare and execute the Law as it is, and to strain nothing in Order to mould it to their own Conception of what it ought to be. In the Course of his Judgment he observed, that Courts of Justice not only do not incline to allow the Form of Conveyance to operate beyond the Intent of the Parties, but they will be ready to adopt all Manner of Expedients to prevent it, and to confine the Operation of every Conveyance to the special Purpose for which it was made. In another Part, referring to one of the earlier Cases, he said, that the Court of Exchequer carried the odious Doctrine of Revocation no further than they were absolutely obliged to do. Lord Mansfield constantly regretted the Existence of the subsisting Rules, while he subscribed to their Authority. In Swift v. Roberts, 3 Bur. 1491, he said, that constructive Revocations, contrary to the Intention of the Testator, ought not to be indulged—and that some overstrained Resolutions of that Sort had brought a Scandal upon the Law. In Roe v. Griffiths, 4 Bur. 1952, 1 Bl. 603, "The Rule being established must be adhered to, although it is not founded upon truly rational Grounds and Principles, nor upon the Intent, but upon legal Niceties and Subtlety; we ought not to depart from it now, notwithstanding one could wish that no such Rule had ever been established, and lament that such Subtleties should ever been admitted as the Ground of it." "All Revocations, which are not agreeable to the Intention of the Testator, are founded on

'Debts, and after their Degrees set forth and advance their Children No. 1.
'and Posterities: Wherefore our said Sovereign Lord, most virtuously 32 H. VIII. c. 1.
'considering the Mortality that is to every Person at God's Will and 'Pleasure most common and uncertain, of his blessed Disposition and 'Liberality, being willing to relieve and help his said Subjects in their 'Necessities and Debility, is contented and pleased that it be ordained

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artificial and absurd Reasoning"—Doe v. Potts, Doug. 710. Lord Loughborough had a more favourable Opinion of these Decisions, as necessarily resulting from fair legal—that is from fair systematical—Reasoning, and not depending upon captious Nicety.—See Brydges v. Duchess of Chandos, 2 Ves. jun. 417

With those Sentiments which I entertain in Favour of the Propriety of a legislative Correction of the existing System of the Law, in Cases where the practical Application of it is attended with real Convenience, I certainly should feel Pleasure from the Enactments, that no Devise of Lands should be annulled or affected by any Recovery, Fine, or other Conveyance of the Land therein comprized, except so far as shall be necessary for the particular Object or Purpose for which such Conveyance shall be made—but that every such Devise shall be valid and effectual at Law, as to all such legal Interest as after such Conveyance shall remain in or result to the Devisor—and that, where the legal Estate shall be transferred from such Devisor, the Devise shall be deemed valid and effectual in Equity, as to all such beneficial Right and Interest as shall continue to belong to the Devisor.

It remains only to notice the Cases to which the Rule whereby a Will is annulled by a subsequent Alteration in the Estate of the Testator does not apply.

If the Disposition only embraces a particular Interest in the Estate, as in the Case of a Lease, the Will is only affected to the Extent of the Interest conveyed.

The only Instance at Law in which a Will remains valid after a Disposition operating upon the entire Estate, is that of a Partition; with Respect to which it is held, that although affected by Fine, the Will continues in Force. See Luther v. Kidby, 8 Vin. Abr 148. 3 P. Wms. 169. Risby v. Bultinglass, T. Raym. 240. But if the Act extends further than mere Partition, and contains a Limitation to such Uses as the Devisor shall by Deed or Will appoint, the Will is annulled. Tickner v. Tickner, cited 3 Atk. 742. In the Discussion of the Case of Goodtitle v. Otway, in the Court of Common Pleas, some Doubt was thrown upon the former of these Decisions; and the later was considered by some of the Judges as overturning it;—but it seems to be now agreed, that the Law is as stated, Attorney-General v. Vigor, 8 Ves. 281, and the Observations of Lord Eldon in Maundrell v. Maundrell, 10 Ves. 246, where this Distinction is relied upon as shewing the Efficacy of a Power of Appointment by the Person to whom in Default of Appointment the Premises are limited in Fee.

In the Case of the Attorney-General v. Vigor, ubi supra, it was established that if Lands after being devised are exchanged, and after the Death of the Devisor restored in consequence of the Eviction of the Lands taken in Exchange, the Devise is not thereby re-established.

In Equity, it is established that a Mortgage or Conveyance in Trust for Payment of Debts, is only a Revocation *pro tanto*; but a Trust for Payment of Debts, and after Payment thereof to convey the Estate to such Uses as the Devisor should by Deed or Will appoint, has been held to be a Revocation. Kenyon v. Sutton, cited 2 Ves. jun. 600. and the Exception does not extend to other Dispositions for a particular Purpose. In Harmood v. Oglander, 8 Ves. 126, Lord Eldon said that it did not occur to him there were in Equity any Cases where the partial, particular Purpose was not for Charges and Incumbrances, or which is the same Thing, to pay Debts; and Equity has said that which is a Revocation at Law shall not be a Revocation in Equity.

Where a Devise is made by a Person seised of, or intitled to, an equitable Estate, it is not annulled in Equity by a Conveyance to him of the legal Estate. This is continually exemplified in the Cases of Wills made of Estates for which the Testator has entered into a Contract of Purchase, and which

No. 1. 32 H. VIII c. 1. 'and enacted by Authority of this present Parliament in Manner and 'Form as hereafter followeth;' that is to say, That all and every Person or Persons, having, or which hereafter shall have, any Manors, Lands, Tenements or Hereditaments, holden in Soccage, or of the Nature of Soccage Tenure, and not having any Manors, Lands, Tenements or Hereditaments, holden of the King our Sovereign Lord by Knights Service, by Soccage Tenure in chief, or of the Nature of Soccage Tenure in Chief, nor of any other Person or Persons by Knights Service, from the twentieth Day of *July* in the Year of our Lord God *M.D.XL.* shall have full and free Liberty, Power and Authority to give, dispose, will and devise, as well by his last Will and Testament in Writing, or otherwise by any Act or Acts lawfully executed in his Life, all his said Manors, Lands, Tenements or Hereditaments, or any of them, at his free Will and Pleasure; any Law, Statute or the other Thing heretofore had, made or used to the contrary notwithstanding.

3 Bulstr. 184. Lands holden in Soccage, and none in Chief, or by Knights Service. 1 Bulstr. 165. 1 Roll 65. Godbolt 17, pl. 21. Moor 254, pl. 401. Cro. El. 100. Dyer, f. 72, 127. 3 Leon. 5, 276. Moor 342, pl. 462.

Explained by 34 & 35 H. 8, c. 5, § 3. 1 Leon. 113, 252, 267. 3 Leon. 28, 79. Moor 825, pl. 858. Cro. Car. 34. See 3 Bur. 1489 to 1498.

Lands holden of the King in Soccage in Chief, and none holden by Knights Service. Lee 53.

II. And that all and every Person and Persons, having Manors, Lands, Tenements or Hereditaments, holden of the King our Sovereign Lord, his Heirs or Successors, in Soccage, or of the Nature of Soccage Tenure in Chief, and having any other Manors, Lands, Tenements or Hereditaments, holden of any other Person or Persons in Soccage, or of the Nature of Soccage Tenure, and not having any Manors, Lands, Tenements or Hereditaments, holden of the King

are subsequently conveyed. See Rose v. Cunnyngham, 11 Ves. 550. In Watts v. Fullarton, cited Doug. 691, it was held that the Will was not revoked by the Purchaser taking the Conveyance to another Person in Trust for himself.

So the Will of a Person entitled to an equitable Estate is not revoked by a Conveyance of the legal Estate from one Trustee to another. Watts v. Fullarton, Doug. 718. nor the Will of a Person entitled, subject to a Mortgage in Fee, by a Conveyance from the Mortgagee to a Trustee for the Mortgagor. Doe v. Potts, Doug. 719. But in the recent Case of Rawlins v. Bengis, 2 V. & B. 382. a Person after devising Land which he had contracted to purchase, took the Conveyance with the usual Limitations to bar Dower, with the Interposition of a Trustee; and it was ruled by the Vice-Chancellor that the Will was revoked.

In Williams v. Owen, 2 Ves. jun. 595, a Testator having articled to settle his Estate previous to Marriage, devised the Reversion subject to the Estates, intended to be created by the Articles, and afterwards conveyed the Estate to the Uses and upon the Trusts mentioned in the Articles. This was ruled by Sir R. P. Arden, Master of the Rolls, to be no Revocation; and compared to the Case of a Person having an equitable Estate taking a Conveyance of the legal Estate;—but the Decision is considered as inconsistent with the Rules established in subsequent Cases, especially in Cave v. Holford. See 3 Ves. 684, and Harmood and Oglander, ubi supra. Cave v. Holford, 3 Ves. 682. 7 Bro. P. C. 593. The Ground of the Lord Chancellor's dissent (as stated in Harmood v. Oglander) from the Decisions in Williams v. Owen, is, that the Testator never had any equitable Estate in the Reversion in Fee: "You cannot have a legal Estate in Trust for yourself. There is a Conjunction of the legal and equitable Interests, and therefore it was a legal Estate that passed under that Will."

As to whether a Deed set aside in Equity for Fraud is a Revocation of a preceding Will, see Beard v. Beard, 3 Atk. 72. Hawes v. Wyatt, 3 Bro Ch. 156, and Observations thereon, in 7 Vesey 373. exparte the Earl of Ilchester's Case, and in the Attorney-General v. Vigor, 8 Ves. 283. And see Roberts on Wills, c. 2, sec. 6.

As to Deeds inoperative for the Purpose intended, but amounting to the Revocation of an antecedent Will, see Shore v. Pincke, 5 T. R. 124. Beard v. Beard, ubi supra.

No. 1. 32 H. VIII.

our Sovereign Lord by Knights Service, nor of any other Lord or Person by like Service, from the twentieth Day of *July* in the said Year of our Lord God *M.D.XL.* shall have full and free Liberty, Power and Authority to give, will, dispose and devise, as well by his last Will or Testament in Writing, or otherwise by any Act or Acts lawfully executed in his Life, all his said Manors, Lands, Tenements and Hereditaments, or any them, at his free Will and Pleasure; any Law, Statute, Custom or other Thing heretofore had, made or used to the contrary notwithstanding.

III Saving alway and reserving to the King our Sovereign Lord, his Heirs and Successors, all his Right, Title and Interest of *Primer Seisin* and Reliefs, and also all other Rights and Duties for Tenures in Soccage, or of the Nature of Soccage Tenure in Chief, as heretofore hath been used and accustomed, the same Manors, Lands, Tenements or Hereditaments to be taken, had and sued out of and from the Hands of his Highness, his Heirs and Successors, by the Person or Persons to whom any such Manors, Lands, Tenements or Hereditaments shall be disposed, willed or devised, in such and like Manner and Form, as hath been used by any Heir or Heirs before the making of this Statute; and saving and reserving also Fines for Alienations of such Manors, Lands, Tenements, or Hereditaments holden of the King our Sovereign Lord in Soccage, or of the Nature of Soccage Tenure in chief, whereof there shall be any Alteration of Freehold or Inheritance, made by Will, or otherwise, as is aforesaid.

A Saving of the King's Primer Seisin, and his Fines for Alienation.
Explained by 34 & 35 H. 8, § 9.

IV. And it is further enacted by the Authority aforesaid, That all and singular Person and Persons having any Manors, Lands, Tenements, or Hereditaments of Estate of Inheritance holden of the King's Highness in chief by Knight's Service, or of the Nature of Knight's Service in chief, from the said twentieth Day of *July* shall have full Power and Authority, by his last Will, by Writing, or otherwise by any Act or Acts lawfully executed in his Life, to give, dispose, will or assign two Parts of the same Manors, Lands, Tenements, or Hereditaments in three Parts to be divided, or else as much of the said Manors, Lands, Tenements, or Hereditaments, as shall extend or amount to the yearly Value of two Parts of the same, in three Parts to be divided, in Certainty and by special Divisions, as it may be known in Severalty, to and for the Advancement of his Wife, Preferment of his Children, and Payment of his Debts, or otherwise at his Will and Pleasure; any Law, Statute, Custom, or other Thing to the contrary thereof notwithstanding.

Lands holden of the King by Knights Service in Chief.
1 Anders. 147.
Moor 726, pl. 1013.
6 Co. 75.
11 Co. 24.
Dyer, f. 210.
Co. Lit. 76, a.
2 Anders. 207.

V. Saving and reserving to the King our Sovereign Lord, the Custody, Wardship and *Primer Seisin,* or any of them, as the Case shall require, of as much of the same Manors, Lands, Tenements or Hereditaments, as shall amount and extend to the full and clear yearly Value of the third Part thereof, without any Diminution, Dower, Fraud, Covin, Charge or Abridgment of any of the same third Part, or of the full Profits thereof:

Wardship, saved to the King.
Dyer, f. 181, 191, 193, 308, 313, 370.
Co. Lit. 78, a.

VI. Saving also and reserving to the King our said Sovereign Lord, all Fines for Alienations of all such Manors, Lands, Tenements and Hereditaments, holden of the King by Knights Service in chief, whereof there shall be any Alteration of Freehold or Inheritance made by Will or otherwise, as is abovesaid.

Lands holden of the King by Knights Service or otherwise.
Cro. El. 286.
1 Roll 67.

VII. And be it enacted by Authority aforesaid, That all and singular Person and Persons, having Manors, Lands, Tenements or Hereditaments of Estate of Inheritance, holden of the King in chief by Knights Service, and having other Manors, Lands, Tenements or Hereditaments holden of the King, or of any other Person or Persons by Knights Service, or otherwise, every such Person and Persons from the said twentieth Day of *July* shall have full Power and Autho-

Dyer, f. 158, 366. 6 Co. 17. 11 Co. 23. Lee 29. 13 Co. 49, 50. Dyer, f. 286, [illegible], 354.

No. 1.
32 H. VIII. c. 1.

rity to give, dispose, will or assign by his last Will in Writing, or otherwise by any Act or Acts lawfully executed in his Life, two Parts of the same Manors, Lands, Tenements or Hereditaments, in three Parts to be divided, or else as much of the same Manor, Lands, Tenements and Hereditaments, as shall extend or amount to the yearly Value of two Parts of the same, in three Parts to be divided, in Certainty and by special Divisions, as it may be known in Severalty, to and for the Advancement of his Wife, Preferment of his Children, Payment of his Debts, or otherwise at his Will and Pleasure; any Law, Statute, Custom, or other Thing to the contrary thereof notwithstanding:

Wardship Primer Seisin and Fines for Alienation, saved to the King.
Dyer, f. 306.
8 Co. 165.
9 Co. 125, 131, 137.
Moor 38, p. 124
Lee 32.

VIII. Saving alway and reserving to the King our Sovereign Lord, the Custody, Wardship and *Primer Seisin*, or any of them, as the Case shall require, of as much of the same Manors, Lands, Tenements, or other Hereditaments, as shall amount and extend to the full and clear yearly Value of the third Part thereof, without any manner Diminution, Dower, Fraud, Covin, Charge or Subtraction of the same third Part, or of the full Profits theref:

IX. Saving also and reserving to our said Sovereign Lord the King, all Fines for Alienation of any such Manors, Lands, Tenements or Hereditaments, holden of the King by Knights Service in chief, whereof there shall be any Alteration of Freehold or Inheritance made by Will or otherwise, as is abovesaid.

Lands holden by Knights Service of other Lords than the King, and other Lands holden in Soccage.

X. Be it further enacted by the Authority abovesaid, That if any Person or Persons hold any Manors, Lands, Tenements or Hereditaments, only of any other Lord or Person, than of the King our said Sovereign Lord by Knights Service, and other Lands and Tenements in Soccage, or of the Nature of Soccage Tenure, that then every such Person shall or may give, dispose or assure, by his last Will, or otherwise by any Act or Acts lawfully executed in his Life, two Parts of the said Manors, Lands and Tenements holden by Knights Service, or of as much thereof as shall amount to the full yearly Value of two Parts, in Manner and Form as is above declared, and also all the Lands and Tenements holden by Soccage, or of the Nature of Soccage Tenure, at his Will and Pleasure, as is above written; saving and reserving to the Lord of the Lands and Tenements holden by Knights Service, for his Custody and Wardship, as much of the same Lands and Tenements holden by Knights Service, for his Custody and Wardship, as much of the same Lands and Tenements as shall extend or amount to the full and clear yearly Value of the third Part of the same Lands and Tenements holden by Knights Service, without any Diminution, Dower, Fraud, Covin, Charge or Subtraction of any Portion of that third Part, or of the clear yearly Value thereof, in Manner and Form aforesaid.

The Lord's Wardship of the third Part saved.
Dyer, f. 367.
2 Co. 25.
Bro. Test. 19.

Lands holden of the King by Knights Service & not in chief, and Lands holden in Socage of others

XI. And be it further enacted by the Authority aforesaid, That if any Person or Persons hold any Manors, Lands, Tenements or Hereditaments, only of the King our Sovereign Lord by Knights Service, and not in Chief, or hold any Manors, Lands, Tenements or Hereditaments of our said Sovereign Lord by Knights Service, and not in Chief, and also hold other Manors, Lands, Tenements and Hereditaments, of any other Person or Persons by Knights Service, and also hold other Manors, Lands, Tenements or Hereditaments, of any other Person or Persons in Soccage, or of the Nature of Soccage Tenure; that then all and every such Person and Persons shall and may give, dispose, will, devise and assure, by his last Will, or otherwise by any Act or Acts lawfully done and executed in his Life, two Parts of the same Manors, Lands, Tenements and Hereditaments holden of our said Sovereign Lord the King by Knights Service, and two Parts of the Manors, Lands, Tenements and Hereditaments

holden of any Person or Persons by Knights Service, or as much of either of them as shall amount to the full yearly Value of two Parts, in Manner and Form as is above declared; and also of all his Lands and Tenements so holden in Soccage, or of the Nature of Soccage Tenure, at his free Will and Pleasure.

No. 1.
32 H. VIII. c. 1.

XII. Saving and reserving to the King's Highness, the Custody and Wardship of as much of the same Manors, Lands, Tenements or other Hereditaments, as shall extend and amount to the full and clear yearly Value of the third Part of the said Manors, Lands, Tenements and Hereditaments so holden of his Highness by Knights Service, without any Diminution, Dower, Fraud, Covin, Charge and Subtraction of any Portion of that third Part, or of the full Profits thereof; and also saving and reserving to the Lords of whom any of the said Manors, Lands, Tenements or other Hereditaments been holden by Knights Service, for the Custody and Wardship, as much of the same Manors, Lands, Tenements or Hereditaments holden of them, or any of them, by Knights Service, as shall extend and amount to the full and clear yearly Value of the third Part of the same, without any Diminution, Charge, Fraud, Covin or Subtraction of any Portion of that third Part, or of the clear yearly Value of the third Part thereof, in Manner and Form above declared.

Saving to the King and other Lords, Custody and Wardship. Dyer, f. 121. 2 Co. 91.

XIII. Provided alway, and be it further enacted by the Authority aforesaid, That if that third Part of the Manors, Lands, Tenements or Hereditaments of any of the King's Subjects, which in any of the Cases abovesaid shall hereafter come to the King's Highness, his Heirs or Successors, by Virtue of this Act, as is abovesaid, be not, or do not amount to the clear yearly Value of the full third Part of all the said Manors, Lands, Tenements, or other Hereditaments, whereof the King's Highness is or shall be intitled to have the Custody or *Primer Seisin*, as is abovesaid; that then our said Sovereign Lord, and his Heirs, shall and may, at his or their free Liberty and Pleasure, take into his or their Hands and Possession, as much of the other two Parts of the said Manors, Lands, Tenements and other Hereditaments, as with that of the same Manors, Lands, Tenements or Hereditaments holden or remaining in the King's Hands, shall make up the clear yearly Value of the full third Part of the said Manors, Lands and Tenements so to be had to the King's Highness in Title of Wardship and *Primer Seisin*, or any of them, as the Case shall require: And like Benefit and Advantage to be given to every Lord or Lords, of whom any such Manors, Lands, Tenements or Hereditaments been or shall be holden by Knights Service, as is abovesaid, concerning only his third Part, of or for Title of Wardship.

The King or any other Lord may take so much as will amount to his third Part if it be not left unto them.

XIV. Provided alway, and be it further enacted by the Authority aforesaid, That every Person and Persons shall sue their Liveries for Possessions, Reversions or Remainders, and also pay Reliefs and Heriots, after such Manner and Form as they should or ought to have done before the making of this Act, and as if this Act had never been made.

XV. And that Fines for Alienations shall be paid in the King's Chancery, for and upon Writs of Entry in the *Post*, to be obtained in the same Court of Chancery, after the said twentieth Day of *July*, for common Recoveries to be had or suffered of any Manors, Lands, Tenements or Hereditaments, holden of the King in Chief, in like Manner and Form as is used upon Alienations of such Manors, Lands, Tenements or Hereditaments, so holden in Chief, by Fine or Feoffment.

Fines for common Recoveries. 6 Co. 27. Bro. Alienation 32.

XVI. Provided also, and be it enacted by the Authority aforesaid, That in such Cases where Fines for Alienations shall be paid in the King's Chancery for Writs of Entry in the *Post*, as is aforesaid,

[illegible] 1. that then none other Fine shall be paid in the same Court for any such Writs; any Usage or Custom to the contrary thereof notwithstanding.

XVII. And be it further enacted by the Authority aforesaid, That where two or more Persons now hold, or hereafter shall hold, any Manors, Lands, Tenements or Hereditaments, of the King our Sovereign Lord by Knights Service, jointly to them, and to the Heirs of one of them, and he that hath the Inheritance thereof dieth, his Heir being within Age, that in every such Case the King shall have the Ward, and Marriage of the Body of such Heir so being within Age; the Life of the Freeholder or Freeholders of the said Manors, Lands, Tenements or Hereditaments so holden by Knights Service notwithstanding: Saving and reserving to all and every Woman and Women, all and every such Right, Title and Interest of Dower, as they or any of them ought to have, or be or shall be justly intitled to
[illegible] 126. have, claim or demand of any Manors, Lands, Tenements or Heredi-
[illegible] Car. 100. taments, by the Laws of this Realm, to be taken or assigned unto
Leon. 151. them, or any of them, out of the two Parts of the said Manors,
Co. Lit. 111, b. Lands, Tenements or Hereditaments, severed and divided from the third Part, as is abovesaid, and not otherwise; and saving also to the King our Sovereign Lord, his Heirs and Successors, the Reversions of all such Tenants in Jointure and Dower, immediately after the Death of all such Tenants, if they shall happen to die during the Minority of the King's Wards.

No. 2.

34 & 35 Henry VIII. c. 5.—The Bill concerning the Explanation of Wills.

34 & 35 H. 8. c. 5. 'WHERE in the last Parliament begun and holden at *Westminster* the twenty-eighth Day of *April* in the thirty-first Year
32 H. 8, c. 1. 'of the King's most gracious Reign, and there by divers Prorogations 'holden and continued unto the twenty-fourth Day of *July* in the 'thirty-second Year of his said Reign, it was by the King's most 'gracious and liberal Disposition shewed toward his most humble and 'obedient Subjects, ordained and enacted how and in what manner 'Lands, Tenements and other Hereditaments might be by Will or 'Testament in Writing, or otherwise by any Act or Acts lawfully 'executed in the Life of every Person, given, disposed, willed or de-'vised, for the Advancement of the Wife, Preferment of the Children, 'Payment of Debts of every such Person, or otherwise at his Will 'and Pleasure, as in the same Act more plainly is declared: Sithen 'the making of which Estatute, divers Doubts, Questions and Ambi-'guities have risen, been moved, and grown, by Diversity of Opi-'nions, taken in and upon the Exposition of the Letter of the same 'Estatute.'

II. For a plain Declaration and Explanation whereof, and to the Intent and Purpose that the King's obedient and loving Subjects shall and may take the Commodity and Advantage of the King's said gracious and liberal Disposition, the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, most humbly beseech the King's Majesty, that the Meaning of the Letter of the same Estatute, concerning such Matters hereafter rehearsed, may be by the Authority of this present Parliament enacted, taken, expounded, judged, declared and explained in Manner and Form following:

No. 2.

34 & 35 H. VIII. c. 5.

III. First, Where it is contained in the same former Statute, within divers Articles and Branches of the same, that all and singular Person and Persons having any Manors, Lands, Tenements or Hereditaments of the Estate of Inheritance, should have full and free Liberty, Power and Authority to give, will, dispose or assign, as well by his last Will and Testament in Writing, or otherwise by any Act or Acts lawfully executed in his Life, his Manors, Lands, Tenements or Hereditaments, or any of them, in such Manner and Form as in the same former Act more at large it doth appear. Which Words *of Estate of Inheritance*, by the Authority of this present Parliament, is and shall be declared, expounded, taken and judged of Estates in Fee-simple only.

The Words Estate of Inheritance now to be understood.

IV. And also that all and singular Person and Persons having a sole Estate or Interest in Fee-simple, or seised in Fee-simple in Coparcenery, or in Common in Fee-simple, of and in any Manors, Lands, Tenements, Rents or other Hereditaments, in Possession, Reversion, Remainder, or of Rents or Services incident to any Reversion or Remainder, and having no Manors, Lands, Tenements or Hereditaments holden of the King, his Heirs or Successors, or of any other Person or Persons by Knights Service, shall have full and free Liberty, Power and Authority to give, dispose, will or devise, to any Person or Persons (except Bodies Politick and Corporate) by his last Will and Testament in Writing, or otherwise by any Act or Acts lawfully executed in his Life, by himself solely, or by himself and other jointly, severally or particularly, or by all those Ways, or any of them, as much as in him of Right is or shall be, all his said Manors, Lands, Tenements, Rents and Hereditaments, or any of them, or any Rents, Commons or other Profits or Commodities out of or to be perceived of the same, or out of any Parcel thereof, at his own free Will and Pleasure; any Clause in the said former Act notwithstanding

Fee Simple in Coparcenary, Common, &c.
29 Car. 2, c. 3, § 12.
1 Bulstr 62.
Poph 87, 91.
3 Co 30.
10 Co. 81.
Dyer 158, 354.
1 Cro 805
Dyer 255.
Moor 38, pl. 124. Hob 136.
Devising of Commons and
3 Co 33.
8 Co. 84.
Cro El. 805.
Moor 625, pl. 858 See 3 Bur. 1489 to 1498.

V. And further, be it declared and enacted by the Authority aforesaid, That all and singular Person and Persons, having a sole Estate or Interest in Fee-simple, or seised in Fee-simple in Coparcenery, or in Common in Fee-simple, of or in any Manors, Lands, Tenements, Rents or other Hereditaments, in Possession, Reversion or Remainder, or of and in any Rents or Services incident to any Reversion or Remainder, holden of the King by Knights Service in Chief, or of the Nature of Knights Service in Chief, hath, and by the Authority of this present Parliament shall have, full and free Liberty, Power and Authority to give, dispose, will or assign to any Person or Persons (except Bodies Politick and Corporate) by his last Will and Testament in Writing, or otherwise by any Act or Acts lawfully executed in his Life-time by himself solely, or by himself and others jointly, severally or particularly, or by all those Ways, or any of them, as much as in him of Right is or shall be, two Parts as well of all the said Manors, Lands, Tenements, Rents and Hereditaments, as of all and singular his other Rents and Hereditaments, or of any of them, or any Rents, Commons or other Profits or Commodities, out of or to be perceived of the same two Parts, or out of any Parcel thereof in three Parts to be divided, or as much thereof as shall amount to the full and clear yearly Value of two Parts thereof, in three Parts to be divided, of what Person or Persons soever the same be holden, at his free Will and Pleasure.

Lands holden of the King by Knights Service in Chief.
Moor 177, pl. 313, 314.
Lee 41, 51, 65.
10 Co. 80.
Dyer 287.
Co. Lit. 76.

VI. And that by the Authority aforesaid, the said Will so declared shall be good and effectual for two Parts of the said Manors, Lands, Tenements and Hereditaments, although the Will so declared be made of the whole, or of more than two Parts of the same: The same Division to be made and set forth by the Devisor or Owner of

No 2.
34 & 35 H. VIII. c. 5.

the same Manors, Lands, Tenements and Hereditaments, by his last Will in Writing, or otherwise in Writing; and in Default thereof, by a Commission to be granted out of the King's Court of the Wards and Liveries, upon the Inquiry of the true Value thereof by the Oaths of twelve Men, and Return or Certificate thereof had in the same Court, of the said Manors, Lands, Tenements and Hereditaments, Division to be made by the Master of the Wards and Liveries, if the Master of the Wards and Liveries for the Time being, and the Parties thereunto, cannot otherwise agree upon the same Division: And that the Issues and Profits of the two Parts of the same Manors, Lands, Tenements and Hereditaments, upon every such Division to be restored to them that shall have Right or Title to the same from the Death of the Owner or Devisor thereof.

Lands holden of the King or others by Knights Service and Lands holden in Socage.
Dyer 158.

VII. And further be it enacted and declared by the Authority aforesaid, That all and singular Person and Persons, having a sole Estate or Interest in Fee-simple, or seised in Fee-simple in Coparcenery, or in Common in Fee-simple, of and in any Manors, Lands, Tenements, Rents or other Hereditaments, in Possession, Reversion or Remainder, or of and in any Rents or Services incident to any Reversion or Remainder holden of the King, his Heirs or Successors, by Knights Service, and not in Chief, or holden of any other Person or Persons by Knights Service, shall have full and free Liberty, Power and Authority to give, dispose, will or devise to any Person or Persons (except Bodies Politick and Corporate) by his last Will and Testament in Writing, or otherwise by any Act or Acts lawfully executed in his Life by himself solely, or by himself and other jointly, severally or particularly, or by all those Ways, or any of them, as much as in him of Right is or shall be, two Parts of all the said Manors, Lands, Tenements and Hereditaments, or any of them, so holden by Knights Service, or any Rents, Common or other Profits or Commodities, out of or to be perceived of the same two Parts, or out of any Parcel thereof in three Parts to be divided, or as much thereof as shall amount to the full and clear yearly Value of two Parts thereof in three Parts to be divided, at his free Will and Pleasure.

A Will made of the whole shall be good for two Parts.
Raym. 249.
Hob. 80.
1 Roll 192.
Dyer 367.
8 Co. 84.
Goldsb. 34.
Hetley 57.

VIII. And that the said Will, so declared by Authority aforesaid, shall be good and effectual for two Parts of the said Manors, Lands, Tenements and Hereditaments, although the Will so declared be or shall be made of the whole Lands and Tenements so holden by Knights Service, or of more than two Parts of the same; and also for the whole of all other such Manors, Lands, Tenements and Hereditaments, or any of them, not holden of the King by Knights Service in Chief, or otherwise by Knights Service, nor of any other Person by Knights Service, and of any Rents, Commons or other Profits or Commodities, out of or to be perceived of the same, or out of any Parcel thereof, at his free Will and Pleasure; the same Division to be made and set forth by the Owner of the said Manors, Lands, Tenements and Heredіments, by his last Will and Testament in Writing, or otherwise in Writing; and in Default thereof, for as much of the same Manors, Lands, Tenements and Hereditaments as shall concern the King's Interest, by Commission to be directed out of the King's Court of the Wards and Liveries, in Manner and Form as is aforesaid, if the Master of the Wards and Liveries for the Time being and the Parties thereunto cannot otherwise agree upon the same Division; and that Restitution of the Issues and Profits of the two Parts thereof shall be had and made in Manner and Form abovesaid: And for such of the same Manors, Lands, Tenements and Hereditaments, as shall concern the Interest of any other Lord or Lords, by Commission to be granted out of the King's Court of the Chancery, to enquire thereof by the Oaths of twelve Men, if the same Lord or Lords and the Parties thereunto cannot otherwise agree upon the same Division.

1 Anders. 348.
How the Division of the two Parts in three shall be set forth.

No. 2.
34 & 35 H. VIII. c. 5.

An Exposition of the Savings, Reservings and Provisions of this Act, and the Statute of 32 H. 8. c. 1.
3 Co. 27.

IX. And be it further enacted and declared by Authority aforesaid, That the Savings, Reservings and Provisions concerning saving of the Custody, Wardship, Relief, and *Primer Seisin* to the King, of such Manors, Lands, Tenements and Hereditaments, or as much thereof as shall appertain unto him by Virtue of the said former Act, and by the Declaration and Exposition thereof declared by this present Act, during the King's Interest therein, and also of the Custody and Wardship to other Lords, of as much of such Manors, Lands, Tenements and Hereditaments holden of them, as shall amount and extend to the clear yearly Value of the third Part thereof, over and above all Charges, without any Diminution or Abridgment of the third Part, or of the full Profits thereof, comprised and mentioned in divers Articles in the said former Act contained, by the Authority aforesaid, be and shall be intended, expounded and taken as hereafter ensueth; that is to say, That the King shall have and take for his full third Part of all such Manors, Lands, Tenements and Hereditaments, whereunto he is or shall be intitled by the said former Act, and by this present Act, such Manors, Lands and Tenements as shall by any Means descend, or come by Descent, as well of Estate of Inheritance in Fee-tail as in Fee-simple, or in Fee-tail only, to the Heir of any such Person that shall make any Will, Gift, Disposition or Devise by his last Will in Writing, or by any Act or Acts lawfully executed in his Life, immediately after the Death of the same Devisor or Owner thereof.

Devise of all the Fee-simple Lands, leaving the third Part of entailed Lands, leaving the third Part of entailed Lands to the King or other chief Lord.
Dyer 15[illegible].
3 Co. 2[illegible]
10 Co. 1[illegible]

X. And that the Will, Gift and Devise of every such Devisor or Owner, of and for the two Parts of the said Manors, Lands, Tenements and Hereditaments residue, shall by the Authority aforesaid be and stand good and effectual in the Law, albeit the same Will, Gift or Devise be had and made of all his Fee-simple Lands, Tenements and Hereditaments, or of the more Part thereof.

XI. And in Case the same Manors, Lands, Tenements and Hereditaments, which after the Death of any such Owner or Devisor, which shall make any such Gift, Disposition or Devise by his last Will in Writing, or otherwise by any Act or Acts lawfully executed in his Life, to his Wife, Children, or otherwise, as is aforesaid, which shall immediately after his Death descend, revert, remain or come to his Heir or Heirs, as well of Estate of Inheritance in Fee-tail, as of Estate in Fee-simple, or Fee-tail only, be not or shall not amount or extend to the full clear yearly Value of the full third Part, with the full Profits thereof, of all the said Manors, Lands, Tenements or other Hereditaments of the said Devisor or Owner, according to the true Intent and Meaning of the said former Act, and of this present Act; that then the King shall and may have and take into his Hands and Possession to make up his full third Part, with the full Profits thereof, according to his Interest therein, as much of the other Manors, Lands, Tenements and Hereditaments, willed, given, disposed or assigned by any such Person to his Wife, Children, or otherwise as is aforesaid, as with such of the same Manors, Lands, Tenements and Hereditaments, descended or by any Means come unto the Heir, as Heir of any such Devisor or Owner, shall make up the clear yearly Value of the said full third Part, with the full Profits thereof, of all the said Manors, Lands, Tenements and Hereditaments of such Owner or Devisor, so to be had to the King in Title of Wardship or *Primer Seisin*, as the Case shall require; and the Division thereof to be had and made, and with the Restitution of the Profits of the two Parts of the said Manors, Lands, Tenements and Hereditaments, in such Manner and Form as is above rehearsed; and like Advantage and Benefit to be given, had and taken by the said Authority to every Lord and Lords, of whom any such Manors,

A Remedy where a full third Part is not left for the King or other Lords

No. 2.
34 & 35 H. VIII. c. 5.

Lands, Tenements or Hereditaments been or shall be holden by Knights Service, in Manner and Form as is abovesaid, concerning only his or their third Parts thereof, according to their said Interest therein.

A Remedy for the King or other Lords, if the third Part be evicted.

XII. And be it further enacted by the Authority aforesaid, That if it happen the same third Part, or any Part thereof, left, willed or assigned to the King or other Lord, at any Time during their Interests therein, to be lawfully evicted or determined; that then the King and the other Lord shall have as much of the two Parts residue as shall accomplish and make up a full third Part in clear yearly Value, after the Rate and Portion of such Manors, Lands, Tenements and Hereditaments, as shall then happen to remain of the same third Part, not evicted nor determined, and of the other two Parts of such Manors, Lands, Tenements and Hereditaments, as the King or other Lord should or ought to have had by Virtue of the said former Act and this present Act; and the same to be divided in Manner and Form above rehearsed; any Clause in the said former Act notwithstanding

A Pardon of Alienation must be sued by those to whom Lands be devised, paying the third Part of the yearly Value of the Lands holden in Chief
22 Car. 2, c. 24.

XIII. And be it further enacted and declared by the Authority aforesaid, That the saving and reserving for Fines for Alienation by any such last Will and Testament of such Manors, Lands, Tenements and Hereditaments, holden of the King by Knights Service in Chief, or of the Nature of Knights Service in Chief, or by Socage in Chief, or of the Nature of Socage-Tenure in Chief, or for Fines for Alienation of such Manors, Lands, Tenements or Hereditaments, whereof there shall be any Alteration of Freehold or of Inheritance, made by any such last Will, comprised in divers and sundry Articles mentioned in the said former Act, be and shall be intended, expounded, taken, deemed and judged, by the Authority aforesaid, that all such Person or Persons, to whom the said Manors, Lands, Tenements or Hereditaments, or any of them, be or shall be given, disposed, willed, or devised by any such last Will, shall be exonerated, acquitted, and discharged for ever against the King, his Heirs and Successors, for all such Fines for Alienations by any such last Will or Testament without Licence, by suing forth of the King's Pardon for Alienation out of the King's Court of Chancery, paying to the King, his Heirs or Successors, for the Fine of every such Alienation, the third Part of the yearly Value of the same Manors, Lands, Tenements or other Hereditaments to him or them willed or devised. And this Act from Time to Time shall be a sufficient Warrant to the Lord Chancellor of *England*, or Keeper of the Great Seal for the Time being, for the granting out of the said Pardon or Pardons under the King's Great Seal, as heretofore hath been used for Pardons for Alienation, without any further Suit to be made to the King for the same.

Persons incapacitated to devise their Lands.
4 Co. 23.
Dyer 354.
Hob. 225.

XIV. And it is further declared and enacted by the Authority aforesaid, That Wills or Testaments made of any Manors, Lands, Tenements or other Hereditaments, by any Woman covert, or Person within the Age of twenty-one Years, Ideot, or by any Person *de non sane* Memory, shall not be taken to be good or effectual in the Law.

Assurances by Covin to defraud the King and other Lords of their Wardships, Marriages, &c
32 H. 8, c. 6.
Dyer 123, 276.
6 Co. 76.

XV. And be it further enacted by the Authority aforesaid, That if any Person or Persons having Estate of Inheritance of or in Manors, Lands, Tenements or Hereditaments, holden of the King by Knights Service in Chief, or otherwise of the King by Knights Service, or of any other Person or Persons by Knights Service, hath given at any Time sithen the twentieth Day of the said Month of *July*, or hereafter shall give, will, devise, or assign by Will or other Act executed in his Life, his Manors, Lands, Tenements or Hereditaments, or any of them, by Fraud or Covin, to any other Person or Persons for Term of Years, Life or Lives, with one Remainder over in Fee, or with divers Remainders over for Term of Years, Life, or in Tail, with a

No 2.
31 & 35 H. VIII. c. 5.

Remainder over in Fee-simple to any Person or Persons, or to his or their right Heirs: or at any Time sithen the said twentieth Day of *July* hath conveyed or made, or hereafter shall convey or make, by Fraud or Covin, contrary to the true Intent of this Act, any Estates, Conditions, Menalties, Tenures or Conveyances, to the Intent to defraud or deceive the King of his Prerogative, *Primer Seisin*, Livery, Relief, Wardship, Marriages or Rights, or any other Lord of their Wardships, Reliefs, Heriots, or other Profits, which should or ought to accrue, grow, or come unto them, or any of them, by or after the Death of his or their Tenant, by Force and according to the former Estatute, and of this present Act and Declaration: And the same Estates and other Conveyances being found by Office to be so made or contrived by Covin, Fraud or Deceit, as is above said, contrary to the true Intent and Meaning of the said former Act and of this Act; that then the King shall have as well the Wardship of the Body, and Custody of the Lands, Tenements and Hereditaments, as Livery, *Primer Seisin*, Relief, and other Profits, which should or ought to appertain to the King, according to the true Intent and Meaning of the said former Act and of this present Act, as though no such Estates or Conveyances by Covin had never been had or made, until the said Office be lawfully undone by Traverse or otherwise.

A Remedy for the King to avoid fraudulent Conveyances.

XVI. And that the other Lord and Lords, of whom any such Manors, Lands, Tenements or Hereditaments shall be holden by Knights Service, as is aforesaid, shall have their Remedy in such Cases for his or their Wardships of Bodies and Lands, by Writ of Right of Ward; and shall distrain and make Avowry or Cognisance by themselves or their Bailiffs, for their Reliefs, Heriots, and other Profits which should have been to them due by or after the Death of their Tenant, as if no such Estate or Conveyance had been had or made:

A Remedy for other Lords to avoid fraudulent Conveyances.
9 Co. 129.

XVII. Saving and reserving always, by the Authority aforesaid, the Right and Title of the Donees, Feoffees, Lessees and Devisees thereof, against the said Devisor and his Heirs, after the Interest and Title of the King or other Lord therein ended and determined.

The Rights of the Donees, &c. saved after the Kings or other Lord's Interest expired.

XVIII. Provided always, That this Act of Explanation or Declaration, or any of them, or any Thing in this said Act, Explanation and Declaration contained, shall not extend to the Will or Devise of Sir *John Gainsford*, late of *Crowherst* in the County of *Surrey*, Knight, deceased; nor to the Will or Devise of *Richard Creswell*, late of *Mattingly* in the County of *Southampton*, Gentlemen, deceased; nor to the Will or Devise of *Thomas Unton*, late of the County of *Berks*, Gentleman, deceased, Son of Sir *Thomas Unton*, Knight, also deceased; or shall be in any ways prejudicial or hurtful to any Person or Persons for or concerning any Manors, Lands, Tenements or Hereditaments, contained or specified in the said Wills or Devises, or in any of them, but that the said last Wills and Devises, and every of them, shall stand, abide, remain, and be in the same Case, Force, and Effect in the Law to all Intents, Purposes and Constructions, as the said last Wills and Devises, and every of them, were before the making of this Act, Declaration and Explanation, and of none other Effect or Force; this Act, Declaration and Explanation, or any of them, or any Thing therein contained to the contrary thereof in any wise notwithstanding.

Dyer 287.
Certain Persons to whose Wills this Statute extendeth not.

XIX. Provided alway, and be it enacted by the Authority aforesaid, That all and every Person and Persons, from whom the King or other Lord or Lords shall take any Manors, Lands, Tenements or Hereditaments, for his or their full third Part, or to make up his or their full third Part, shall and may by Authority of this present Act, in any of the Cases aforesaid, upon his or their Bill exhibited in the

Contribution for him from whom the King taketh any Lands to make up his third Part.
Note; the 19th Section does precede the 18th on the Roll.

No 2.
34 & 35 H. VIII. c. 5
3 Co. 25
Co. Lit. 76, a.
78, a. 111, b.

King's high Court of Chancery, against all and every such Person and Persons which shall be intitled by or under any such Will, Gift, Disposition or Devise, to the other two Parts, have such Contribution or Recompence for the same, as by the Lord Chancellor of *England*, or by the Keeper of the Great Seal of *England* for the Time being, shall be thought good and convenient.

No. 3.

12 Charles II. c. 24:—An Act for taking away the Court of Wards and Liveries, and Tenures *in Cupite*, and by Knights Service, and Purveyances and for settling a Revenue upon his Majesty in lieu thereof.

[Inserted ante Class I. No. 15. See Sections 8 & 9, as to the testamentary Appointment of Guardians]

No. 4.

29 Charles II. c. 3.—An Act for Prevention of Frauds and Perjuries.

[Inserted ante Class I. No. 17.]

No. 5.

3 William & Mary, c. 14.—An Act for the Relief of Creditors against fraudulent Devises.

3 W. & M. c. 14.

'WHEREAS it is not reasonable or just, that by the Practice 'or Contrivance of any Debtors their Creditors should be 'defrauded of their just Debts; and nevertheless it hath often so 'happened, that where several Persons having by Bonds or other 'Specialties bound themselves and their Heirs, and have afterwards 'died seised in Fee-simple of and in Manors, Messuages, Lands, 'Tenements and Hereditaments, or had Power or Authority to 'dispose of or charge the same by their Wills or Testaments, have, to 'the defrauding of such their Creditors, by their last Wills or Testa-'ments devised the same, or disposed thereof in such Manner as such 'Creditors have lost their said Debts:' For remedying of which, and 'for the Maintenance of just and upright Dealing,

Wills fraudulent against Creditors.

II. Be it enacted and declared by the King's and Queen's most Excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by Authority of the same, That all Wills and Testaments, Limitations, Dispositions, or Appointments, of or concerning any Manors, Messuages, Lands, Tenements, or Hereditaments, or of any Rent, Profit, Term, or Charge out of the same, whereof any Person or Persons at the Time of his, her, or their Decease, shall be seized in Fee-simple, in Possession, Reversion, or Remainder, or have Power to dispose of the same, by his, her, or their last Wills or Testaments, to be made after the Five and Twentieth Day of *March*.

in the Year of our Lord God, One thousand six hundred ninety and two, shall be deemed and taken (only as against such Creditor or Creditors as aforesaid, his, her, and their Heirs, Successors, Executors, Administrators, and Assigns, and every of them) to be fraudulent, and clearly, absolutely, and utterly void, frustrate, and of none Effect; any Pretence, Colour, feigned or presumed Consideration, or any other Matter or Thing to the contrary notwithstanding.

No. 5.
3 W. & M. c. 14.

Vin. V. 13, 521.

Debt upon Bond jointly suable against the Heir and Devisee of an Obligor.

III. And, for the Means that such Creditors may be enabled to recover their said Debts, be it further enacted by the Authority aforesaid, That in the Cases before mentioned, every such Creditor shall and may have and maintain his, her, and their Action and Actions of Debt, (1) upon his, her, and their said Bonds and Specialties, against the Heir and Heirs at Law of such Obligor or Obligors, and such Devisee and Devisees, jointly (2) by virtue of this Act; (3) and such Devisee or Devisees shall be liable and chargeable for a false Plea (4) by him or them pleaded, in the same Manner as any Heir should have been for any false Plea by him pleaded, or for not confessing the Lands or Tenements to him descended. (5)

Devisee chargeable for a false Plea as an Heir.

Devise for raising Portion, pursuant to a Marriage Contract, good.

IV. Provided always, and be it enacted by the Authority aforesaid, That where there hath been or shall be any Limitation or Appointment, Devise or Disposition, of or concerning any Manors, Messuages, Lands, Tenements, or Hereditaments, for the raising or Payment of any real and just Debt or Debts, (6) or any Portion or

The Provision being confined to an Action of Debt, an Action of does not lie thereon.—Wilson v. Kembley, 7 East, 127.

A Suit in Equity, founded upon the Statute, must also be against the Heir and Devisee jointly.—Warren v. Stawell, 2 Atk. 125.

(3) See the Manner of declaring, Clift's Entr. 145—Lilly's Entr. 145, 529, 520—2 Rich. C. B. 241—Went. 374—2 Chitty, 161.

(4) In Case within the Statute the Devisee must shew by Plea the particular Lands devised.—Gott v. Atkins, in Willes, 523.

(5) But in the Arrangement of the Funds in Equity, between the Heir and Devisee, it is established, that Assets descended to the Heir must be applied to pay Debts before Lands can be charged which are specifically devised.—Chaplin v. Chaplin, 3 P. Wms. 367—Powis v. Corbet, 3 Atk. 556. As to the Order of Liability between different Funds, see Harmood v. Oglander, 8 Vesey, 124—Milnes v. Slater, ibid 295.

(6) In Gott v. Atkinson, Willes, 521, it was ruled, that no Action can be maintained upon this Statute against Devises in Trust to sell and apply the Money arising by such Sale in Payment of Debts—and by Wills, Ch. J. as the Exception is worded, if there had been a Devise for the Payment of any particular Debt by simple Contract, it would have been a good Devise against the Plaintiffs, though Bond Creditors. In the recent Case of Millar v. Horton, 1 Cowp. Ch. 45, it was ruled, that a Devise to pay simple Contract Creditors, in preference to specialty, was good within the Statute. In Vernon v. Vawdry, Barn. 304, cited ibid. it had been held, that a Devise to pay Debts, excepting a Debt as Surety, was not within the Proviso—but that Case seems repugnant both to the express Letter of the Act, and the other Authorities upon the Subject. In Lingard v. Lord Derby, 1 Bro. Ch. 311, the Testator devised to Trustees in Trust, to pay the *yearly* Rents and Profits in Payment of his Debts. Upon Application by Bond Creditors for a Sale, it was insisted, that the Will could not stand by the Statute, for a Bond Creditor without the Devise may compel a Sale, and the Devise tends to defeat his claim—but by Lord Loughborough, L. C. both by the Words and Construction of the Statute, where there is a Devise for the Payment of Debts, it takes the Case out of the Statute, and it stands as it would have done before the Statute was made—the Creditor can come only as the Will directs. See to the same Effect the Earl of Bath v. the Earl of Bradford, 2 Ves. 577. In Hughes v. Doulben, 2 Bro. Ch. 614, the Testator made a general Charge of his Debts upon his real Estate, and devised a particular Estate to Trustees for that Purpose, excepting the Mansion-house. Lord Thurlow said, that he was

No. 5.
3 W. & M. c. 14.

Portions, Sum or Sums of Money, for any Child or Children of any Person, other than the Heir at Law, according to, or in pursuance of any Marriage Contract or Agreement in Writing *bona fide* made before such Marriage, the same and every of them shall be in full Force; and the same Manors, Messuages, Lands, Tenements, and Hereditaments, shall and may be holden and enjoyed by every such Person or Persons, his, her, and their Heirs, Executors, Administrators, and Assigns, for whom the said Limitation, Appointment, Devise, or Disposition was made, and by his, her, and their Trustee or Trustees, his, her, and their Heirs, Executors, Administrators, and Assigns, for such Estate or Interest as shall be so limited or appointed, devised or disposed, until such Debt or Debts, Portion or Portions, shall be raised, paid, and satisfied; any Thing in this Act contained to the contrary notwithstanding.

If the Heir aliene before Action brought, he shall be liable to the Value of the Land.

'V. And whereas several Persons being Heirs at Law, to avoid 'the Payment of such Debts, as in regard of the Lands, Tenements, 'and Hereditaments descending to them, they have by Law been 'liable to pay, have sold, aliened, or made over such Lands, Tene'ments, or Hereditaments, before any Process was or could be issued 'out against them;' be it further enacted by the Authority aforesaid, That in all Cases where any Heir at Law shall be liable to pay the Debt of his Ancestor in regard of any Lands, Tenements, or Hereditaments descending to him, and shall sell, aliene, or make over the same, before any Action brought, or Process sued out against him, that such Heir at Law shall be answerable for such Debt or Debts, in an Action or Actions of Debt, to the Value of the said Land so by him sold, aliened, or made over; in which Cases all Creditors shall be preferred, as in Actions against Executors and Administrators, and such Execution shall be taken out upon any Judgement or Judgements so obtained against such Heir, to the Value of the said Land, as if the same were his own proper Debt or Debts; saving that the Lands, Tenements, and Hereditaments, *bona fide* aliened before the Action brought, shall not be liable to such Execution. (7)

Creditors preferred, as in Actions against Executors.

Upon Riens per Descent pleaded, Jury shall enquire of the Value of the Lands.

VI. Provided always, and be it further enacted by the Authority aforesaid, That where any Action of Debt upon any Specialty is brought against any Heir, he may plead *Riens per Descent*, at the

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not aware that a Gift for the Payment of Debts, in a Manner which would not answer the Purpose, was such a Devise as would take the Case out of the Statute; that if the Debts could not be paid by the Means provided in the Devise, he should order the Estate to be sold, notwithstanding the Statute, and should consider it so far as fraudulent—and if the Estate without the Mansion-house was not sufficient, the Mansion-house must be sold. In Bailey v Ekins, 7 Ves. 323, Lord Eldon said, that the uniform Rule is, that a Provision by Will, effectual in Law or Equity for Payment of Creditors, is not fraudulent within the Intent of the Statute.—See Kidney v Coussmaker, 12 Vesey, 154. Where an Estate is devised generally for Payment of Debts, it is a settled Rule, that simple contract Creditors are intitled equally with Creditors by Specialty—and that if the specialty Creditors have exhausted the personal Estate, they can have no Benefit from the real Estate constituting equitable Assets, until the simple contract Creditors are placed *pari passu*—and in the above mentioned Case of Bailey and Ekins, and the Authorities there cited, it was held, that a Charge upon an Estate, as well as a Devise, makes it equitable Assets.

(7) If the Heir pay his Ancestor's Debts, to the Value of the Land descended, he may hold the Land discharged from the Debts of the Ancestor.—Butcher v. Nightingale, 1 Str. 665. But he cannot plead that he claims to retain a certain Sum for Money laid out in repairing the Premises descended.—Shuttleworth v. Neville, 1 D. & E. 454.

It was agreed, that in Case of real Estates the Creditor of the Ancestor may follow them, and their specific Produce in the Hands of the Assignees, if sold under a Bankruptcy.—Ex parte Merton, 5 Vesey, 449.

Time of the original Writ brought, or the Bill filed against him; any Thing herein contained to the contrary notwithstanding; and the Plaintiff in such Action may reply, that he had Lands, Tenements, or Hereditaments, from his Ancestor before the original Writ brought, or Bill filed; and if upon Issue joined thereupon, it be found for the Plaintiff, the Jury shall enquire of the Value of the Lands, Tenements, or Hereditaments so descended, and thereupon Judgement shall be given, and Execution shall be awarded as aforesaid; but if Judgement be given against such Heir by Confession of the Action, without confessing the Assets descended, or upon Demurrer, or *Nihil dicit*, it shall be for the Debt and Damages, without any Writ to enquire of the Lands, Tenements, or Hereditaments, so descended. No. 5. 3 W. & M. c. 14 Otherwise if Judgment by Confession for Debt and Da. Carthew 353, 354.

VII. Provided also, and be it further enacted, That all and every Devisee and Devisees, made liable by this Act, shall be liable and chargeable in the same Manner as the Heir at Law by force of this Act, notwithstanding the Lands, Tenements, and Hereditaments, to him or them devised, shall be aliened before the Action brought. Provided always, That this Act shall be in force for Three Years, and to the End of the next Session of Parliament after the Expiration of the said Three Years, and no longer. [Made perpetual by 6 & 7 W. 3. cap. 14.] Devisee chargeable as Heir. To continue for three Years.

No. 6.

4 Anne, c. 16.—An Act for the Amendment of the Law, and the better Advancement of Justice.

[Inserted ante Class I. No. 23. See Section 14, as to Nuncupative Wills.]

No. 7.

14 George II. c. 20.—An Act to amend the Law concerning Common Recoveries, and to explain and amend an Act made in the twenty-ninth Year of King Charles the Second, intituled, *An Act for Prevention of Frauds and Perjuries*, so far as the same relates to Estates *pur autre Vie*.

[Inserted ante Class X. No. 23.]

No. 8.

25 George II. c. 6.—An Act for avoiding and putting an End to certain Doubts and Questions relating to the Attestation of Wills and Codicils concerning real Estates in that Part of *Great Britain* called *England*, and in his Majesty's Colonies and Plantations in *America*.

'WHEREAS by an Act made in the twenty-ninth Year of the 'Reign of his late Majesty King Charles the Second, intituled, *An Act for Prevention of Frauds and Perjuries*; it is 'amongst other Things enacted, That from and after the twenty-'fourth Day of *June*, in the Year of our Lord one thousand six hun-'dred and seventy-seven, all Devises and Bequests of any Lands or 25 Geo. II. c. 6. 29 Car. 2, c. 3, § 5.

No. 8.
35 Geo. II. c. 6.

'Tenements deviseable, either by Force of the Statute of Wills, or by 'that Statute, or by Force of the Custom of *Kent*, or the Custom of 'any Borough, or any other particular Custom, shall be in Writing, 'and signed by the Party so devising the same, or by some other 'Person in his Presence, and by his express Direction; and shall be 'attested and subscribed in the Presence of the said Devisor, by three 'or four credible Witnesses, or else they shall be utterly void and of 'none Effect, which hath been found to be a wise and good Provision: 'But whereas Doubts have arisen who are to be deemed legal Wit-'nesses within the Intent of the said Act;' Therefore, for avoiding the same, be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That if any Person shall attest the Execution of any Will or Codicil which shall be made after the twenty-fourth Day of *June*, in the Year of our Lord one thousand seven hundred and fifty-two, to whom any beneficial Devise, Legacy, Estate, Interest, Gift, or Appointment of or affecting any Real or Personal (1) Estate, other than and except Charges on Lands, Tenements, or Hereditaments for Payment of any Debt or Debts, shall be thereby given or made, such Devise, Legacy, Estate, Interest, Gift, or Appointment, shall, so far only as concerns such Person attesting the Execution of such Will or Codicil, or any Person claiming under him, be utterly null and void; and such Person shall be admitted as a Witness to the Execution of such Will or Codicil, within the Intent of the said Act; notwithstanding such Devise, Legacy, Estate, Interest, Gift, or Appointment mentioned in such Will or Codicil.

Devisee, &c. attesting, the Devise void, but he admitted to prove the Will.

II. And be it further enacted by the Authority aforesaid, That in case, by any Will or Codicil already made or hereafter to be made, any Lands, Tenements, or Hereditaments, are or shall be charged with any Debt or Debts; and any Creditor whose Debt is so charged, hath attested or shall attest the Execution of such Will or Codicil, every such Creditor, notwithstanding such Charge, shall be admitted as a Witness to the Execution of such Will or Codicil, within the Intent of the said Act.

Creditor attesting, admitted a Witness.

III. And be it further enacted by the Authority aforesaid, That if any Person hath attested the Execution of any Will or Codicil already made, or shall attest the Execution of any Will or Codicil which shall be made on or before the said twenty-fourth Day of *June*, in the Year of our Lord one thousand seven hundred and fifty-two, to whom any Legacy or Bequest is or shall be thereby given, whether charged upon Lands, Tenements, or Hereditaments or not; and such Person, before he shall give his Testimony concerning the Execution of any such Will or Codicil, shall have been paid, or have accepted or released, or shall have refused to accept such Legacy or Bequest, upon Tender made thereof; such Person shall be admitted as a Witness to the Execution of such Will or Codicil, within the Intent of the said Act, notwithstanding such Legacy or Bequest.

Legatee who has been paid, or shall refuse his Legacy, admitted a Witness.

IV. Provided always, and be it further enacted, That in case of such Tender and Refusal as aforesaid, such Person shall in no wise be intitled to such Legacy or Bequest, but shall be for ever afterwards barred therefrom; and in case of such Acceptance as aforesaid, such Person shall retain to his own Use the Legacy or Bequest which shall have been so paid, satisfied, or accepted, notwithstanding such Will or Codicil shall afterwards be adjudged or determined to be void for want of due Execution, or for any other Cause or Defect whatsoever.

After Refusal, he is barred from the Legacy; but after Acceptance, may retain.

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(1) R. acc. Lees v. Summersgill, 17 Vesey, 508, that a personal Bequest to a subscribing Witness is void, although no Attestation is necessary.

No. 8.
35 Geo. II. c. 6.

Legatee attesting, and dying in the Life-time of the Testator, or before he has received or refused his Legacy.

V. And be it further enacted, That in case any such Legatee as aforesaid, who hath attested the Execution of any Will or Codicil already made, or shall attest the Execution of any Will or Codicil which shall be made on or before the said twenty-fourth Day of *June*, in the Year of our Lord one thousand seven hundred and fifty-two, shall have died in the Life-time of the Testator, or before he shall have received or released the Legacy or Bequest so given to him as aforesaid, and before he shall have refused to receive such Legacy or Bequest, on Tender made thereof, such Legatee shall be deemed a legal Witness to the Execution of such Will or Codicil, within the Intent of the said Act, notwithstanding such Legacy or Bequest.

Credit of the Witness to be determined by Court, &c.

VI. Provided always, That the Credit of every such Witness so attesting the Execution of any Will or Codicil, in any of the Cases in this Act before mentioned, and all Circumstances relating thereto, shall be subject to the Consideration and Determination of the Court, and the Jury, before whom any such Witness shall be examined, or his Testimony or Attestation made use of; or of the Court of Equity, in which the Testimony or Attestation of any such Witness shall be made use of; in like Manner, to all Intents and Purposes, as the Credit of Witnesses in all other Cases ought to be considered of and determined.

No Devisee, whose Devise is void, &c. [illegible] cution of the [illegible] shall after [illegible] take any Pen[illegible] Compensatio[illegible] the same.

VII. And be it further enacted by the Authority aforesaid, That no Person to whom any beneficial Estate, Interest, Gift, or Appointment shall be given or made, which is hereby enacted to be null and void as aforesaid, or who shall have refused to receive any such Legacy or Bequest, on Tender made as aforesaid, and who shall have been examined as a Witness concerning the Execution of such Will or Codicil, shall, after he shall have been so examined, demand or take Possession of or receive any Profits or Benefit of or from any such Estate, Interest, Gift, or Appointment so given or made to him, in or by any such Will or Codicil; or demand, receive, or accept from any Person or Persons whatsoever, any such Legacy or Bequest, or any Satisfaction or Compensation for the same, in any Manner or under any Colour or Pretence whatsoever.

Cases wh[illegible] Validity or [illegible] and Comp[illegible] of Witnesses not affected.

VIII. Provided always, and be it enacted by the Authority aforesaid, That this Act, or any Thing herein contained, shall not extend or be construed to extend to the Case of any Heir at Law, or of any Devisee in a prior Will or Codicil of the same Testator, executed and attested according to the said recited Act, or any Person claiming under them respectively, who has been in quiet Possession for the Space of two Years next preceding the sixth Day of *May*, in the Year of our Lord one thousand seven hundred and fifty-one, as to such Lands, Tenements, and Hereditaments, whereof he has been in quiet Possession as aforesaid; and also that this Act, or any Thing herein contained, shall not extend, or be construed to extend, to any Will or Codicil, the Validity or due Execution whereof hath been contested in any Suit in Law or Equity commenced by the Heir of such Devisor, or the Devisee in any such prior Will or Codicil, for recovering the Lands, Tenements, or Hereditaments, mentioned to be devised in any Will or Codicil so contested, or any Part thereof, or for obtaining any other Judgment or Decree relative thereto, on or before the said sixth Day of *May*, in the Year of our Lord one thousand seven hundred and fifty-one, and which has been already determined in favour of such Heir at Law, or Devisee in such prior Will or Codicil, or any Person claiming under them respectively, or which is still depending, and has been prosecuted with due Diligence; but the Validity of every such Will or Codicil, and the Competency of the Witnesses thereto, shall be adjudged and determined in the same Manner, to all Intents and Purposes, as if this Act had never been

No. 8. 35 Geo. II. c. 6. made; any Thing herein before contained to the contrary thereof in any wise notwithstanding.

Possessions which are not comprehended within the Meaning of the preceding Clause. IX. Provided always nevertheless, and it is hereby declared, That no Possession of any Heir at Law, or Devisee in such prior Will or Codicil as aforesaid, or of any Person claiming under them respectively, which is consistent with, or may be warranted by or under any Will or Codicil attested according to the true Intent and Meaning of this Act, or where the Estate descended or might have descended to such Heir at Law, till a future or executory Devise, by Virtue of any Will or Codicil attested according to this Act, should or might take Effect, shall be deemed to be a Possession within the Intent and Meaning of the Clause herein last before contained.

'X. And whereas in some of the *British* Colonies or Plantations in *America*, the said Act of the twenty-ninth Year of the Reign of King CHARLES the Second, has been received for Law, or Acts of Assembly have been made, whereby the Attestion and Subscription of Witnesses to Devises of Lands, Tenements, and Hereditaments have been required:' Therefore, to prevent and avoid Doubts which may arise in the said Colonies or Plantations, in relation to the Attestation of such Devises of Lands, Tenements, and Hereditaments; be it enacted by the Authority aforesaid, That this Act, and every Clause, Matter and Thing therein contained, shall extend to such of the said Colonies and Plantations, where the said Act of the twenty-ninth Year of the Reign of King CHARLES the Second, is by Act of Assembly made, or by Usage received as Law, or where by Act of Assembly or Usage, the Attestation and Subscription of a Witness or Witnesses are made necessary to Devises of Lands, Tenements, or Hereditaments; and shall have the same Force and Effect in the Construction of or for the avoiding of Doubts upon the said Acts of Assembly, and Laws of the said Colonies and Plantations, as the same ought to have in the Construction of or for the avoiding of Doubts upon the said Act of the twenty-ninth Year of the Reign of King CHARLES the Second in *England*. The Act to extend to such of the British Colonies, wherein the Act of 29 Car. II. c. 3, is received, &c.

XI. Provided always, That as to Cases arising in any of the said Colonies or Plantations in *America*, no such Devise, Legacy, or Bequest as aforesaid, shall be made null and void by virtue of this Act, unless the Will or Codicil whereby such Devise, Legacy, or Bequest shall be given, shall be made after the first Day of *March*, which shall be in the Year of our Lord one thousand seven hundred and fifty-three.'

No. 9.

55 George III. c. 192.—An Act to remove certain Difficulties in the Disposition of Copyhold Estates by Will.* [12th *July*, 1815.]

55 G. III. c. 192. WHEREAS by the Customs of certain Manors, Copyhold Estates of such Manors pass by the Last Will and Testament of the Copyhold Tenants thereof declaring the Uses of Surrenders made for that Purpose: And whereas much Inconvenience has arisen, from the Necessity of making such Surrenders: For Remedy whereof, May it please your Majesty that it may be enacted; and be it enacted

* A Friend, to whom I had some Time ago communicated my Ideas upon the Subjects mentioned in the preliminary Note to the present Title, applied to me to draw the present Act, on Behalf of the Gentleman who had agreed to bring it forward. I wished the Opportunity not to be lost of submitting to the Attention of the Legislature, the other Modifications of the Law

No. 9.
55 G. III. c. 192.

by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in all Cases where by the Custom of any Manor in *England* or *Ireland* any Copyhold Tenant of such Manor may by his or her Last Will and Testament dispose of or appoint his or her Copyhold Tenements, the same having been surrendered to such Uses as should be declared by such Last Will and Testament, every Disposition or Charge made or to be made by any such Last Will and Testament by any Person who shall die after the passing of this Act, of any such Copyhold Tenemants, or of any Right, Title, or Interest in or to the same, shall be as valid and effectual to all Intents and Purposes, although no Surrender shall have been made to the Use of the Last Will and Testament of such Person, as the same would have been if a Surrender had been made to the Use of such Will:

Dispositions by Will of Copyhold Estates made effectual without previous Surrenders to the Uses thereof.

II. Provided also, and it is hereby further enacted, That no Person entitled or claiming to be entitled to Copyhold Lands, Tenements, or Hereditaments, in consequence of any Testamentary Disposition, shall be entitled to be admitted to the same by Virtue of any Thing in this Act contained, except upon Payment of all such Stamp Duties, Fees, and Sums of Money as would have been lawfully due and payable in Respect of the surrendering of such Copyhold Lands, Tenements, or Hereditaments, to the Use of such Will, or in Respect of the presenting, registering, or enrolling such Surrender, had the same Lands, Tenements, and Hereditaments been surrendered to the Use of the Will of the Person so disposing of the same; all such Stamp Duties, Fees, or Sums of Money due as aforesaid, to be paid in Addition to the Stamp Duties, Fees, or Sums of Money due or payable on the Admission of such Person so entitled or claiming to be entitled to the same Copyhold Lands, Tenements, or Hereditaments, and the Stamp Duties to be affixed to the Copy of the Admission.

Persons admitted under Testamentary Dispositions, to pay the like Fees, &c. as would have been payable on such Surrenders.

III. Provided always, and it is hereby enacted and declared, That nothing in this Act contained shall be construed, deemed, or taken, at Law or in Equity, to render invalid or ineffectual any Devise or Disposition of any Copyhold Lands, Tenements, or Hereditaments, or of any Right, Title, or Interest in or to Copyhold Lands, Tenements, or Hereditaments, which would be valid or effectual if this had not been made; or to render valid and effectual any Devise or Disposition of any Copyhold Lands, Tenements or Hereditaments, or of any Right, Title, or Interest in or to any Copyhold Lands, Tenements, or Hereditaments, which would be invalid or ineffectual if a Surrender had been made to the Use of the Last Will and Testament of the Person attempting to dispose of the same by Will; any Thing herein-before contained to the contrary notwithstanding.

This Act not to invalidate Devises of Copyholds, &c.

referred to in the above mentioned Note, but it was not thought expedient to include them in the intended Bill.

According to the Draft which I submitted, the Provision would have been general, as embracing all Copyhold and Customary Estates, with Respect to such Interests as a Testator could, by any Mode of Conveyance, have disposed of; and I wished the testamentary Power to have been subject to the general Provisions of the Statute of Frauds, as one step towards that general Uniformity in the Mode of testamentary Disposition, which I conceive would be attended with very important Benefit to the Public.

It certainly would never have occurred to me, upon perusing the Purview of the Act, to have contemplated the Necessity of the concluding Proviso, or the Possibility of any Doubts being entertained of the Nature of those which the Proviso is calculated to obviate.

Part II. Class XII.

LAND REVENUE OF THE CROWN.

[This Subject is only introduced so far as the Statutes are connected with private Titles. The Acts relating to the Regulation of official Duties are only included so far as they affect the other object.]

No. 1.

51 Henry III. Stat. 2.—(The Statute *De Districtione Scaccarrii.*)—What Distress shall be taken for the King's Debts, and how it shall be used.

51 H. III. Stat. 2.

The Owner may feed his Cattle unpounded

Bro. Distr. 72.
9 Ed. 4, f. 2.
5 Hen. 7, f. 9.
21 Ed 4, f. 53.

The Wor[d] ... ot in

No Sale of Distress within fifteen Days.

"FORASMUCH as the Commonalty of the Realm hath "sustained great Damage by "wrongful taking of Distresses, "which have been made by She"riffs, and by other the King's "Bailiffs, for the King's Debt, "or for any other cause;" 'It is 'therefore provided and ordained, 'that * *when a Sheriff, or any* '*other Man, doth take the Beasts* '*of other,* they to whom the Beasts do belong may give them 'their Feeding without Disturb'ance (so long as they be im'pounded) without giving any 'thing for their keeping. And 'that the Beasts, nor no other 'Distress taken for the King's 'Debt, nor for any other cause, 'be given ne sold within fifteen 'Days after the taking. And if 'any bring the Tally of a Payment 'made in the Exchequer, the 'Distress shall cease. And if he 'bring the Tally of any Sheriff or 'Bailiff, of Payment made to them 'of the thing demanded, and will 'find Pledges that he will appear 'in the Exchequer, upon the next 'account, to do as Right shall re'quire, then the Distress shall 'cease. And the Sheriff or Bailiff

Cotton *MS. Claudius*, D. 2.

PURCEO qe la comunalte du roialme ad eu graunt damage per torcenouces prises, quount este faites per viscountes, & per autres Bailliffs le Roi, per acheson de la dette le Roi, ou per autre acheson; purveu est que ceux as queux les avers sount les puissent pestre de lour saunz destourber, quaunt eux serrount emparkez, saunz rien doner pur la garde; & que les avers, ne nulla autre destresse pris pur la dette le Roi, ou per autre encheson, ne soient venduz [*ne donez,*] deinz les xv. jours [*de la prise*] Et si nul porte taille come de paie faite a Lescheqer, cesse la destresce & sil [*si nul*] porte taillie de nul Viscounte ou de Baillif de paie fate a lui de la chose demaunde, & voille trover plegges destre al Escheqer al proschein acompt, afaire qe droit serra, adonqes cessa la destresse, & qe le Viscounte, ou les

baillifs, face attacher lui que les deust aveir aquite, sil soit pur mesme lacompte, afaire sur ceo qe droit serra; & eit illoeqnes les nouns des plegges. Unqore est purveu, qe null homme de religion, nautre, soit destreinte per [*ses*] bestes qe gaignent sa terre, ne per ses berbis, pur la dette le Roi, ne pur la dette dautri ne per autre encheson, per le baillif le Roi, ne per autre homme, taunt come lem trove autre destresces, & autres chateux suffisauntz, dount *ils poient* lever la dette, ou *ceo* qe suffice al demaunde, horspris emparkementz des bestes quaunt homme les trove fesauntz damage, selonc leie & lusage de la terre: & qe les destresces soient resonables a la mountaunce de la dette, ou de la demaunde [*damage*,] selonc resoun, & noun pas outrageous [*la value per estimacion des vesins*, &. *nemye per estranges*.] Unqore voet le Roi, & comaunde, que touz les Viscountes & les Baillifs, qounr rescue les dettes le Roi de la somons del Escheqer, & qi naquitent de ceo les dettours sur lour proschein acompte soient puniz selonc les estatutz nadgairs faites. Et voet le Roi, qe touz les dettes de la somons de Lescheqer, qe les Viscountes, ou les Baillifs ount resceu, qils soient maintenaunt allowez; le quel qils eient resceu toute la dette, ou partie, issint qe mes ne viegne en somons, ceo qe *le* Viscount avera conu soi aver resceu, &c.

'shall cause him to be attached that ought to have acquitted him, if he appear upon the same account, to do as Right shall require; and there shall have the names of the pledges. Yet it is provided, that no man of Religion, nor other, shall be distrained by his Beasts that gain his Land, nor by his Sheep, for the King's Debt, nor the Debt of any other man, nor for any other cause, ‡ by the King's or other Bailiffs, but until they can find another Distress, or Chattels sufficient whereof they may levy the Debt, or that is sufficient for the Demand (except impounding of Beasts that a man findeth in his Ground, *Damage feasant*, after the Use and Custom of the Realm). And that such Distresses be reasonable, after the Value of the Debt or Demand, and by the Estimation of Neighbours, and not by Strangers, and not outragious. Howbeit, the King willeth and commandeth, that Sheriffs, or their Bailiffs, that have received the King's Debt of the Summons of the Exchequer, and have not acquitted the Debtors thereof at the next Account, shall be punished after the Statutes made thereupon. And the King willeth, that all Debts of Summons of the Exchequer that the Sheriff or Bailiff have confessed Receipt, shall be allowed him forthwith: so that whether he received all the Debt, or Part, it shall never come more in Demand nor Summons, after the Sheriff hath confessed the Receipt.'

No 1
51 Hen. III st. 4.

No Distress s.. be taken of Plou. Cattle or Sheep.

‡ For By King's Bailiffs, read By the King's Bailiff or other Officer.

Enforced by 28 Ed. 1, stat. 3, c. 12.
Regist. 97.
Rast. 226.
Bro. Distress, f. 31, 67.
4 H. 7, f. 8.
Dyer, f. 312.
Fitz. Brief, 662.
52 H. 3, c. 4.
29 E. 3, f. 16.
29 E. 3, f. 24.
41 E. 3, f. 26.
See 1 Bur. 586, 588.

A Sheriff which receiveth the King's Debt, shall acquit the Debtor.

Enforced by 3 Ed. 1, which subjects Sheriffs offending to a Penalty of treble the Receipt.

51 Henry III. Stat. 5—(*De Scaccario*.)—When the King's Fermors, Sheriffs, and Bailiffs, shall make their Accompts and Payments. Who shall be Escheators in several Shires.

Cotton *MS.* *Claudius*, D. 2.

LE roi voet, qe toutes maneres des Bailrifs, Viscountes, & autres Ministres le Roi, auxibien le Justice de Ceatre, & les Bailifs

'THE King commandeth, that all Manner of Bailiffs, Sheriffs, and other Officers, as well the Justices of *Chester*, and other Bailiffs of these Counties, as

51 Hen. III. st. 5.

When the King's Bailiffs and Officers shall accompt.

No. 1.
51 Hen III st 5.

† The Words in Italics not in the Original.

↓ For Shall bring at the aforesaid Terms &c. read Shall come at the aforesaid Terms, and shall there bring in full the aforesaid Ferms, Rents and Issues, and pay them into the Exchequer.

'other that be Receivers of Issues, 'of Wards, of Escheats, of their 'Bailiwicks, shall be answerable 'in the Exchequer, and there shall 'make account to the Treasurer 'and Barons † *of the same place.* 'And that all Sheriffs, Fermors, 'Bailiffs of Franchises, and other, 'who ought to come to the *Pro-* '*fer* in the Exchequer, the *Mon-* '*day* after the Feast of Saint '*Michael*, and the *Monday* after 'the *Utas* of *Easter*, to pay their 'Ferms, Rents, and Issues be- 'longing to the King, and ↓ *shall* '*bring at the foresaid Terms, the* '*foresaid Ferms, Rents, and Is-* '*sues due, wholly into the Ex-* '*chequer, as before is mentioned.* 'And if they make default, their 'Bodies shall remain without de- 'parting from thence, until they 'have paid or made agreement; 'and he that will not come at the 'Terms aforesaid, shall be amerced 'after the Custom of the Exche- 'quer; and the Sheriffs and Bai- 'liffs at the same Terms shall 'bring and pay such Money as 'they have received of the Sum- 'mons of the Exchequer, and 'other the King's Debts, and shall 'be prepared and ready to make 'full accompt of the things afore- 'said.

des Isles, come autres de touz maneres de resceites des issues, des gardes, des eschetes, de lour baillies, soint respoignantz al escheqer, et illoqes rendent acompte al Tresorer & as Barouns. Et qe touz les Viscountes, Fermers, Baillifs des fraunchises, & autres, qi devent venir al profer del Escheqer, lendemain de seint Michel, & lendemain de la cluse de Pasqe, pur paier lour fermes, rentes, & issues qappendent au Roi, viegnent as avauntditz terms, & portent illoeqes pleinement les avauntdites fermes, rentes, & issues, & les paient al' Escheqer. Et si nul faile de paier pleinement ceo qil doit paier, sicome avaunt est dit, son corps demoerge saunz departier jesques a taunt quil eit paie, ou gree fait Et celui qi ne vendra as avantdites termes, soit amercie selonc les usages del Escheqer. Et a mesmes les termes les Viscountes & les Baillifs porterount les deniers, & paierount al Escheqer, ceo qils averount resceu a la somons del Escheqer, & des autres dettes le Roi, & de touz les choses avantdites soient prestes & appaaillez defaire vewe dacompt.

Bailiffs of Franchises Accompt.

'II. And that Bailiffs of Fran- 'chises, which ought to levy the 'King's Debts, and be answerable 'to the Sheriffs thereof, shall come 'and accompt sufficiently, accord- 'ing to the Extreats of the Sum- 'mons of the Exchequer; and 'such as do not, their Bodies shall 'remain in Ward of the Sheriffs; 'and for Default in them, the 'Sheriffs shall cause the Debts to 'be levied by their own Bailiffs, 'where they have Power, as they 'have used to do in Time passed. 'And if the Bailiffs do not come 'in at the Day that the Sheriff 'shall give them knowledge, the 'Sheriff shall enter into the same 'Franchises, and levy the Debts 'with his own hand.

Et touz les Baillifs des fraunchises, qi deivent les dettes le Roi [*lever*] & respounderont as Viscountes a lour maundement, selonc les estretes de la somons del Escheqer, viegnent & respoignent suffisantement. Et ceux qi ne frount, demoergent les corps de eux en la garde des Viscountes; & les Viscountes, pur lour defautes, envoierent lever les dettes per lour bailiffs demeigne, & per la ou ils purrount, sicome lem soleit faire en temps passe. Et si les Baillifs ne viegnent a respoundre a jour [*de ceo an & jour*,] qe les Viscontes entrent en les fraunchises, & facent lever les dettes per lour baillifs demeigne [*en mesme la manere.*]

The Justices and Bailiffs of Chester's Accompt.

'III. Concerning Justices of '*Chester*, and Bailiffs thereof, the 'King willeth, that they, or one 'of them, shall come at the *Pro-*

En droit de Justice de Cestre, & des Baillifs des Isles, voet le Roi, qils viegnent per ascun de lour al

No. 1.
51 Hen. III. st. 5.

profer de seint Michel chescun an, a rendre quaunt qils deivent au Roi a cel terme. Et a la [*profre de la*] cluse de Pasqe, viegnent en mesme la manere, & portent ce qils deivent au Roi adonqes. Et le Justice de Cestre eit jour dacompt dan en an a la xv. de Pasqe; & les Baillifs des Isles lendemayn de la cluse de Pasqe. Et que touz les Viscountes Dengleterre, horspris le viscounte de Westmerl', Lanc. Wircestr', Roteland', & Cornewaill', desoremes gardent les gardes & les eschetes, qe ne sount en fee, qappendent au Roi dedeinz lour Countees; & des issues loialment respoignent al Escheqer as termes avauntdites; & as termes [*lour tournes*] qils frount per lour Countees, de lour offices, & des autres choses, qe les Eschetours soleient faire, & qappent al escheterie un foitz ou deux, au meindre meschief saunz grevance del poeple, qils purrount. Et les eschetes qe cherrount au roi a demurrier en fee, les Viscountes les seisent, & les facent savoir au Roi saunz delaie.

Et le Roi attournera trois prodes hommes, qi irrount per tote la terre, pur pursouver & estendre les gardes & les eschetes avauntdites, de an en an, quaunt ils verrount qe bon foit. Et les Viscountes per counseil de eux proverqunt per mettre a ferme, & en autre manere, tiels gardes & eschetes en la manere qils verrount, qe mieux soit al pru le Roi.

Et en les cynk Countees avauntnomes, voet le Roi, qe le Viscounte de Cumberl' face loffice deschetrie en les Countees de Westmerl', & Lanc. & celui de Not' en Rotel'; & celui de Lancaster [*de Gloucestre*] en Wircestre; & celui de Devenshire en Cornewaill, & souvement gardent les eschetes

fer of St. *Michael* every Year, 'when they ought to give account 'unto the King; and at the *Pro-'fer* of the *Utas* of *Easter* they 'shall come likewise, and bring 'in that which they owe to the 'King for that Term; and the 'Justices of *Chester* shall have 'Day to accompt from Year to 'Year in *quindena Paschæ*; and 'the Bailiffs thereof the Morrow 'of *Easter Utas*. And that all 'Sheriffs of *England*, except the 'Sheriffs of *Westmoreland*, *Lan-'caster*, *Worcester*, *Rutland* and '*Cornwall*, shall from henceforth 'keep all such Wards and Es-'cheats, that are not in other 'Fees, as belong to the King, 'which be within their Shires; 'and of the Issues thereof they 'shall be answerable in the Ex-'chequer at the Terms aforesaid; '‖ *and at their Turns that they 'make in their Shires, they shall 'find Office of other Things, which 'the King's Escheators have not 'used to find of that which be-'longeth unto the King*, once or 'twice in the Year, to as little 'Grievance of the People as they 'can. And the Sheriffs shall 'seize the Escheats that fall, to 'remain unto the King in Fee, 'and shall certify the King of 'them without delay.

Sheriffs shall keep the Kings Wards and Escheats. Altered by 32 H. 8, c. 46, which establishes the Court of the Kings Wards, and made obs by 12 Car. 2, c. 24

‖ The Meaning of this Sentence seems to be as follows: And at their Turns which they make in their Shires, they shall be answerable for their Offices, and for other Things which the Escheators used to do, and which belong to the Escheat, once &c. N. B. What follows in the next Sentence but one clears up this Passage.

'IV. And the King shall as-'sign three able Persons that shall 'go throughout the Realm, to 'survey and find the Wards and 'Escheats aforesaid, from Year to 'Year, when they shall think re-'quisite. And the Sheriffs by 'their Counsel shall approve, and 'let to Ferm, or otherwise, such 'Wards and Escheats, as they 'shall think most for the King's 'Advantage.

Three Surveyors.

Wards and Escheats let to Ferm.

'V. Touching the five Shires 'before named, the King will, 'that the Sheriff of *Cumberland* 'shall execute the Office of Es-'cheator in the Shires of *West-'morland* and *Lancaster*; and the 'Sheriff of *Nottingham*, in *Rut-'land*; and the Sheriff of *Glou-'cester*, in *Worcester*; and the 'Sheriff of *Devonshire*, in *Corn-'wall*; and shall safely keep the

Sheriffs Escheators in other Shires.

No. 1.
51 Hen III. st. 5.

'King his Wards and Escheats in the same Shires, and shall be answerable in the Exchequer for the Issues of them, as well as for their own Shires. And the three able persons aforesaid shall survey and extend such Wards and Escheats, as well there as in other Places, and those shall be approved by their Counsel. And when the Sheriffs do accompt for their Counties, they shall accompt for such Wards and Escheats. And in like Manner shall the Justices of *Chester* do, and their Bailiffs also, every one for his Bailiwick. And the said three able Persons shall keep the King's Demeans, and shall approve them as they shall think best for the King's Advantage, and shall be answerable in the Exchequer for the Issues: And they shall have Power to let forth small Manors and Demeans to Folk of the same Places, or to other, according to their Discretion, and shall let them to Ferm from Year to Year, as they shall think most to the King's Profit: And the Fermors shall be chargeable for their Ferms unto the principal Approvers, and they unto the Exchequer, the Morrow next after the Ascension, from Year to Year.

[*& les gardes*] au Roi, & de mesmes les Countees, & respoignens des issues al Escheqer, si come ils deivent faire de lour Countees. Et les trois [illegible]es hommes avauntditz surve[illegible] & estenderount tiels gardes & eschetes, sicome aillours, & per le counseil deux soient apprvez. Et quaunt les Viscountes acompterount de lour acomptz, si acompterount des gardes & des eschetes. Et per mesme la manere face le Justice de Cestre, & les Baillifs des Isles, chescun en sa baillie. Et les prodes hommes avauntdites garderount les demeignes le Roi, & les emprowerount selonc ceo qils verront qe mieux soit al oeps le Roi, & responderount al Escheqer des issues: Et mesmes ceux averount poer de bailler petitz maneres en meins a les gentz des mesmes les villes [*lieux*] ou as autre, selonc lour discrecion, a fermes certeins de an en an, per la ou ils verrount qe soit apru le Roi. Et yceux fermers respounderount des issues a ceux avaun ditz principals approvers, & [*soient*] eux la Escheqer lendemain del Ascension, de an en an.

Collectors of the Custom of Woolls.

'VI. And the principal Collectors of the Custom of Woolls, at the two Terms before mentioned, shall pay all such Money as they have received of the said Custom, and shall make accompt from Year to Year clearly of all Parcels received in any of the Ports, or other Places of the Realm, so that they shall answer for every ship where it was charged, and how much Wooll it carried, and for every other Charge in the Ship, whereof Custom is due, and for the whole Receipt.

Et qe les [*principales*] Coillours de la custume des leins paient, a les deux termes avauntditz, touz les deniers, qils averount pris [*coillez*] & resceu de lavauntdit custume, & dan en an rendent acompt apertement & distinctement de touz les parcels resceux per toutes les portes, & per toute la terre, issint qil respoigne de chescun nief, ou ele serra charge, & come bien ele portera de la laine, & dautre aver charge en la nief, de custume qest due, & de toute la resceite.

The Accompt of the Keeper of the King's Wardrobe.
The King's Debt shall be heard.

'VII. And the Warden of the King's Wardrobe shall make accompt yearly in the Exchequer in the Feast of St. *Margaret*; and the Treasurer and Barons of the Exchequer shall be charged by Oath, that they shall not at-

Et le gardein de la Garderobe le Roi rende acompt de an en an al Escheqer a le seint Margarete; Et le Tresorer & les Barouns de Lescheqer soient chargez per serement, qils nentendrount doier les

plees des quereles de nullui, taunt come ils eient affaire des busoignes le Roi, si ce nest querele qe touche la dette le Roi mesmes. Et quaunt Viscount ou Baillif ait comence de acompter, nul ne seit resceu de aconter tanque le primer qe soit assis eit peraccompte, & qe la somme soit resceu. Et qe le Conestable, & le Mareschal, & les mareschalx, & les Chamberleyns, et les autres, qi sont de fee al Escheqer, desoremes persentent au Roi mesmes ceux qils mettérount en lour lieux affaire lour office de lieux: et celes gents soient de bone fame, et qils soient suffiseantz, et tieux pur qi fates ils voillent respoundre.

Et le Roi enjoint al Tresorer et as Barouns, en la foi qils lui deivent, et le serment qils fount, qils ne mettent autres deputes depar eux qe ceux qi sount resceux. Et qe Lescheqer ne soit charge de pluis de gentz qe miestre est. Et qe nul de laviz jure le Roi mette homme pur lui, ne clerc, ne lay, qil ne soit jure de laviz, et ceo saunz especiale conge le Tresorer. Et si null' le face, soit maintenaunt remue de son office, et null' autre ne soit resceu en son lieu saunz le Roi. Et si celui qi serra mys, & celui qi lavera mys, soit puny, selonc le trespas. Et si ambedeux ne suffisent, soient puniz ovesque le seignour [sovereigne,] quel qil soit de efe, ou de autre en son lieu, tanqe le Roi eit autre chose ordene. Et si celui qi avera tenu le lieu dautre per conge le Tresorer, face chose qil ne deyve [*deit faire,*] soit puny selonc le trespas, sil ad de quoi; et sil nad de quoi, celui qi lavera

'tend to hear the Pleas or Matters 'of other Men, while they have 'to do with the King's Business, 'if it be not a Matter that con'cerneth the King's own Debt. 'And when a Sheriff or Bailiff 'hath begun his Accompt, none 'other shall be received to ac'compt, until he that was first ap'pointed hath clearly accompted, 'and his Money received. And 'that the Constable, Marshal, 'Chamberlain, and other that are 'of Fee in the Exchequer, from 'henceforth shall present unto the 'King such as they have put in 'their Places to do their Offices, 'which must be of good Fame, 'and sufficient, for whose Acts 'themselves will answer. No 1. 51 Hen. III.

'VIII. And the King com'mandeth the Treasurer, and Ba'rons of the Exchequer, upon 'their Allegiance, and by the 'Oath that they have made to 'him, that they shall not assign 'any in their rooms, but such as 'this Act meaneth of, and that 'the Exchequer be not charged 'with more Persons than is neces'sary. And that none of them, 'that be sworn to the King, shall 'put in his room any other Clerk 'or Lay Person, except he be 'sworn, without special Licence 'of the Treasurer; and if any be, 'he shall be forthwith removed 'from his Office, and none other 'shall be received in his stead 'without the King's Licence. And 'if any that is received without 'the Treasurer's Licence do tres'pass after, Punishment shall be 'done as well to the Assignor as 'to him that is assigned, accord'ing to the Trespass. And if both 'be unsufficient, their Superior 'shall be punished, whether he be 'Officer of Fee, or other. And 'the Treasurer shall put no other 'in his room, until he hath Com'mandment from the King. And 'if he that keepeth the room of 'another, by Licence of the Trea'surer, doth any Thing that he 'ought not to do, he shall be 'punished according to the Tres'pass, if he have whereof; and if 'he have not, he that put him in

Deputy-Officers in the Exchequer.

No. 1. 51 Hen. III. st. 5

'Office shall be charged for his 'Trespass; and if he that put him 'in Office be not sufficient, his 'Superior shall be charged, whe- 'ther he be of Fee, or otherwise.

'IX. And they * of the Wooll- 'staple shall make [illegible], that if 'any of them may perceive that 'another doth commit any De- 'fault, Offence, or other Thing § '*dishonest in the Office of the* '*Woolstaple, or that he hath done* '*before,* that they shall certify 'it to the Treasurer, or to the 'Barons, or to some of them, who 'shall cause it to be amended, or 'to the King himself, if need re- 'quire. And that about the Feast 'of St. *Margaret,* before that the 'Exchequer be closed, they shall 'cause a Search to be made, whe- 'ther any Sheriff or Bailiff, that 'ought to have accompted the 'same Year, have not, and there- 'upon a Remembrance in a Roll 'shall be made by itself. And if 'it be a Sheriff, his Accompt shall 'be first heard after *Michaelmas,* 'before that any other be received 'to accompt: And if he be a Bai- 'liff, he shall be summoned or 'distrained to come at a certain 'Day for to accompt, so that no 'Accompt shall be suffered to 'leep And forasmuch as She- 'riffs, Constables, and other, ob- 'tain many times outrageous Al- 'lowances, by Pretence of the 'King's Works, and other Things 'done and provided by his Com- 'mandment; it is provided, that all 'Surveyors of the King's Works 'shall be chosen by the Oath ‡ 'of Twelve Men, and of such as 'are best skilled, and will and 'may attend best to that Office; 'and that they be sufficient to 'answer the King, if need be; and 'shall swear that they bear lawful 'witness. And if the King or 'Barons of the Exchequer have 'any Suspicion of false Allow- 'ances of Charges, or other 'Things, the Truth must be in- 'quired; and he that is attainted 'shall answer to the King for as 'much as the Allowance amount- 'eth unto, and shall be impri- 'soned ‖ *one Year and forty*

* Of the Woollstaple is inserted by Mistake.

§ Not in the Original.

The King's Officers that ought to accompt.

Surveyors of the King's Works

‡ Of good Men.

mys respoigne de son trespas. Et si celui ne suffice, respoigne celui qi le avera mys en loffice, le quel qil soit, de fee, ou dautre. Et touz ceux de lavix facent le serement, qe [illegible] qil puis perceiver qe autre face desleaute, ou malveiste, ou autre chose, face assavoir au Tresorer & as Barouns, ou ascun de ceux, qi le face amendre, & si miestre soit, facent savoir au Roi. Et qe entour la feste de seinte Margarete, avaunt qe Lescheqer soit clos, face chescun an bien serchier & veer, si Viscount, ou autre Baillif, qi deust avoir acompt cel an, neit acompte, son acompt soit primerement oy apres le seint Michel, avaunt ceo qe nul autre Viscounte soit resceu dacompter. Et si ceo soit autre Baillif, soit maunde, ou destreint, qil viegne a certein jour dacompter, issint qe nul acompt soit suffert dendormer Et purceo qe les Conestables, Viscountes, & autres [*bailliffs*] ount meintefoitz eu outrageous allowances per faux testmoignance des overeignes le Roi, & des autres choses purveus per ses comaundementz, perveu est, qe touz les veours des overeignes le Roi soient esluz per serement des prodes hommes, & tieux qi mieux sachent, voillent et puissent a cel office entendre, et qe seient suffizans de respoundre au Roi, si miestre soit, et soient jurez qe ils porteronnt loial tesmoignaunce.— Et si le Roi, ou les Barouns [*de lescheqer*] eient null' en suspecion de faux allowance faite des overeignes, ou dautre chose, si soit la verite en requise; et celui qi serra atteint de ceo respoigne au Roi de taunt come cele allowaunce amounte, et eit la prisone, et soit

puny a la volunte le Roi, et les veours soient reintz [*puniz*] pur le consente Et per mesme la manere celui qi avera conceie sur acompt les choses dount il avereust charger, soit puny come cil qi avera [*fait*] faux allowance.

'*Days*, and shall be punished at the King's Pleasure, and the Surveyors shall be punished for their Consent. And likewise he that upon the Accompt did conceal and keep secret such Things, whereof he ought to have charged himself, shall be punished in like wise as he that admitted such false Allowances.

No 1
51 Hen III

Et qe les Justices, enquerrours, et auttes, desoremes liverent al Escheqer, a la seient Michel, de an en an, lour estretes des fins, et des amerciementz faites et taxez devaunt eux, de touz les choses dount estretes soleient estre liverez illoeqes Et ceux de Lecheqer facent lestrete de la somons per touz les Countees, sauve ceo qe lestrete en eire de Justices de touz plees soient maintenaunt liveres apres leire fait.

'X. And that all the Justicers, Commissioners, and other, shall from henceforth deliver into the Exchequer, at the Feast of St *Michael*, from Year to Year, the Extreats of Fines and Amerciaments made and taxed before them, and of all Things wherefore the Extreats are wont to be delivered there. And they of the Exchequer shall make Extreats of the Summons through all Shires, saving that the Extreats in the Eyre of all Pleas shall be delivered immediately after the Eyre made.'

Extreats of Fines and Amerciaments shall be del in the Exchequer.

37 E I c 4 ... the Day of the Ex

No. 2.

52 Henry III. c. 15, (Statute of MARLEBERGE.)—In what Places Distresses shall not be taken.

NULLI de cetero liceat districciones facere ex quacunque causa extra feodum suum, nec in regia via, aut communi statra, nisi domino Regi aut Ministris suis.

'IT shall be lawful for no Man from henceforth, for any manner of Cause, to take Distresses out of his Fee, nor in the King's High-way, nor in the common Street, but only to the King or his Officers having special Authority to do the same.'

25 Hen III c 15
8 Co. 60.
7 H 7, 1.
22 Ed. 4, 19.
Fitz. Bar 231.
Fitz. Trespass, 188. Fitz. Brief, 511, 812.

Fitz. Avowry. 87, 232. 2 Inst. 133. Rast. 266. Regist. 98, 183. 9 Ed. 2, stat 1, c. 9. 2 Inst. 131. Cro. El. 710.

No. 3.

3 Edward I. c. 4, (Statute of WESTMINSTER, the First,) —What shall be adjudged Wreck of the Sea, and what not.

DE wrek de meer est acorde, qe la ou homme, chien, ou chate eschape vif hors de la nief, qe la nief ou le batel ou nul rien qe leins fuist, ne soit jugge a

'CONCERNING Wrecks of the Sea, it is agreed, that where a Man, a Dog, or a Cat escape quick out of the Ship, that such Ship nor Barge, nor any Thing within them, shall

3 Ed I. c. 4.
5 Co. 106.
5 Ed 3, 3.
Bro. Wreck, 21
See 5 Bur. 2739

No. 3.
3 Ed. I. c. 4.

* Not in the Original.
† Ibid. [illegible]

§ For that they were his or [illegible] [illegible] or [illegible], or perished [illegible].

be adjudged Wreck: but the Goods shall be saved and kept by View of the Sheriff, Coroner, or the King's Bailiff,* *and delivered* † *into* the Hands of such as are of the Town where the Goods were found, so that if any sue for those Goods, and after prove that they were *his*, § *or perished* in his Keeping, within a Year and a Day, they shall be restored to him without Delay; and if not, they shall remain to the King, and be seised by the Sheriffs, Coroners, and Bailiffs, and shall be delivered to them of the Town, which shall answer before the Justices of the Wreck belonging to the King. And where Wreck belongeth to another than to the King, he shall have it in like manner. And he that otherwise doth, and thereof be attainted, shall be awarded to Prison, and make Fine at the King's Will, and shall yield Damages also. And if a Bailiff do it, and it be disallowed by the Lord, and the Lord will not pretend any Title thereunto, the Bailiff shall answer, if he have whereof, and if he have not whereof, the Lord shall deliver his Bailiff's Body to the King."

Enforced by 17 Ed. 2, stat. 1, c. 11.
See 4 Ed. 1, st. 2, *d Officio Coronatoris*.
Altered by 12 Ann. stat. 2, c. 18 for preserving Ships & Goods stranded, &c.

wrek; mes soient les choses savez et gardez per la veue del Viscount, del coroner, et de Baillif le Roi, en la main de ceux de la ville, ou les choses sont troves; issint qe si nul sive ceux biens, et puis provere qils soient soens, ou a son seignur, ou en sa garde periz, dedeins lan et le jour, saunz delaie luy soient renduz, et si non, remeinent al Roi, et soient prises per le Viscount, et le Coroner, et Baillif a la ville, a respoundre devant Justices, de wrek qe apent al Roi; et la ou wrek apent a autre qe al Roi; si le eit per mesme le manner: et qi autrement le fra, et de ceo soit atteint, soit agarde a la prisone, et reint a la volunte le Roi, et rendra les damages ensement et si le baillif le face, et soit desavowe de son Seignur, et le seignur ne ne attrate de ce a luy, respoigne le baillif, sil ad de quei, et sil nad de quey, rende le seignur le corps del baillif al Roi.

No. 4.

28 Edward I. stat. 3, c. 12, (*Articuli super Chartas*)—What Distress shall be taken for the King's Debt, and how it shall be used.

1 Ed. I. c. 1[illegible]
4 H. 7, f. 8.
2 Inst. [illegible]
51 H. 3, st. 4
52 H. 3, c. 4.

FROM henceforth the King will, that such Distresses as are to be taken for his Debts shall not be made upon Beasts of the Plough, so long as a Man may find any other, upon the same Pain that is elsewhere ordained by Statute, &c. And he will not that over-great Distresses shall be taken for his Debts, nor driven too far; and if the Debtor can find able and convenient Surety until a Day before the Day limited to the

DERECHIEF voet le Roi qe destresces qe sont a fere pur sa dette ne soient feiz par bestes des carues tant come home puet autre trover solunc ceo qe ordene est aillours par estatut ove la peine &c. E ne voet qe trop grive destresce soit prise pur sa dette ne trop loinz mene e si le dettour pusse trover suffisaunte e covenable seurte [illegible] a un jour deinz [illegible]

le jour le visconte dedenz le quel home en pusse purchaser remedie ou fere gre de la demande soit la destresce relessee endementers. E qui autrement fra soit grevement puny.

'Sheriff, within which a Man 'may purchase Remedy or agree 'for the Demand, the Distress 'shall be released in the mean 'Time; and he that otherwise 'doth, shall be grievously pu- 'nished.'

No. 4. 28 Ed I. c. 12. Regist. 97, 185. Rast. pla. 236.

No. 5.

17 Edward II. Stat. 1, c. 8, (*De Prerogativa Regis.*)—His Prerogative, that Lapse of Six Months shall not prejudice his Presentation.

DE ecclesiis vacantibus quarum advocationes spectant ad Regem et alii presentaverint ad easdem ita quod contentio inter dominum Regem et alios oriatur Si Rex per considerationem presentationem suam recuperaverit licet post lapsum temporis sex mensium a tempore vacationis nullum currit ei tempus dum tamen Rex presentaverit infra predictum tempus sex mensium.

'OF Churches being vacant, 'the Advowsons whereof 'belong to the King, and other 'present to the same, whereupon 'Debate ariseth between the King 'and other; if the King by award 'of the Court do recover his Pre- 'sentation, though it be after the 'Lapse of Six Months from the 'Time of the Avoidance, no 'Time shall prejudice him, so 'that he present within the Space 'of Six Months.'

17 Ed. II. Stat. Bro. Parl. 6. Hob. 214.

Cap. 9.—His Prerogative in the Custody of Lands of Ideots.

REX habet custodiam terrarum fatuorum naturalium capiendo exitus earundem sine vasto et destructione et inveniet eis necessaria sua de cujuscumque feodo terre ille fuerint et post mortem eorum reddat eas rectis heredibus ita quod nullatenus per eosdem fatuos alienentur vel eorum heredes exheredentur.

'THE King shall have the 'Custody of the Lands of 'natural Fools, taking the Profits 'of them without Waste or De- 'struction, and shall find them 'their Necessaries, of whose Fee 'soever the Lands be holden. 'And after the Death of such 'Ideots he shall render it to the 'right Heirs, so that such Ideots 'shall not aliene, nor their Heirs 'shall be disinherited.'

Bro. Idiot, 4, 5, 7. 2 H. 7, 4 Co. 12. 8 Co. 170. 1 H 7, f. 21. Dyer 302. Regist. 266.

Cap. 10.—His Prerogative in the Preservation of Lands of Lunatics.

ITEM habet providere quando aliquis qui prius habuit memoriam et intellectum non fuerit compos mentis sue sicut quidam sunt per lucida intervalla quod terre et tenementa eorundem salvo custodiantur sine vasto et destructione et quod ipse et familia sua

'ALSO the King shall pro- 'vide, when any (that be- 'foretime hath had his Wit and 'Memory) happen to fail of his 'Wit, as there are many *per lu- 'cida intervalla*, that their Lands 'and Tenements shall be safely 'kept without Waste and De- 'struction, and that they and their

4 Co. 127.

No 5.
17 Ed. II Stat 1

'Houshold shall live and be maintained competently with the Profits of the same, and the Residue besides their Sustentation shall be kept to their Use, to be delivered unto them when they come to right Mind; so that such Lands and Tenements shall in no wise be aliened within the Time aforesaid; and the King shall take nothing to his own Use. And if the Party die in such Estate, then the Residue shall be distributed for his Soul by the Advice of the Ordinary.'

de exitibus earundem vivant ex sustineantur competentur et residuum ultra sustentationem eorundem rationabilem custodiatur ad opus ipsorum liberandum eis quando memoriam recuperaverint. Ita quod predicte terre et tenementa infra predictum tempus non alienentur Nec Rex de exitibus aliquid percipiat ad opus suum et si obierit in tali statu tunc illud residuum distribuatur pro anima ejusdem per consilium ordinariorum.

Regist. 266.
See 32 H. 8, c. 46, for the Erection of Court of Wards; which was taken away by 12 Car 2, c. 24.

Cap. 11.—His Prerogative in having the Wreck of the Sea, Whales, and Sturgeons.

5 Co. 106, 108.
1 H. 7, f. 23
11 H. 4, f. 16.
9 H. 7, f. 20.
35 H. 6, f. 27.

'ALSO the King shall have Wreck of the Sea throughout the Realm, Whales and great Sturgeons taken in the Sea or elsewhere within the Realm, except in certain Places privileged by the King.'

ITEM habet Warectum maris per totum regnum Ballenas et sturgiones captos in mari vel alibi infra regnum exceptis quibusdam locis privilegiatis per Reges.

Cap. 15.—His Prerogative, that Knights Fees, Advowsons, and Dowers do not pass from him without special Words.

10 Co. 63.
Dyer 350.
2 R. 3, f. 4.
41 Ed. 3, f. 22.
Fitz. Quare impedit, 31, 40
Fitz. Gard. 44.
Fitz. Liver. 7, 9.
2 Roll. 151.

WHEN our Lord the King giveth or granteth Land or a Manor with the Appurtenances, without he make express Mention in his Deed or Writing of Knights Fees, Advowsons of Churches, and Dowers when they fall, belonging to such Manor or Land, then at this Day the King reserveth to himself such Fees, Advowsons, and Dowers, albeit that among other Persons it hath been observed otherwise.'

QUANDO dominus Rex dat vel concedit aliquod manerium vel terram cum pertinentiis nisi faciat in carta sua vel scripto expressam mentionem de feodis Militum advocationibus ecclesiarum & dotibus cum acciderint ad predicta manerium vel terram pertinentibus tunc hiis diebus Rex reservat sibi eadem feoda et advocationes cum dotibus licet inter alias personas aliter fuerit observatum.

Cap. 16.—His Prerogative in having the Lands of Felons attainted.

'ALSO the King shall have the Goods of all Felons attainted, and Fugitives, wheresoever they be found. And if they have Freehold, then it shall be forthwith taken into the King's Hands, and the King shall have all Profits of the same by one Year and one Day, and the Land shall be wasted and

ITEM Rex habebit omnia catalla dampnatorum felonum et fugitivorum ubicunque inventa fuerint Et si ipsi habeant liberum tenementum tunc illud statim capiatur in manum Regis et Rex habebit omnes exitus ejusdem per unum annum et unum diem et tenementum illud vastabitur et

destruetur de domibus et gardinis boscis et aliis quibuscunque ad predictum tenementum pertinentibus exceptis hominibus quorundam privilegiatorum inde per Regem et postquam Rex habuerit annum et diem et vastum tunc reddatur tenementum illud Capitalibus dominis feodi illius nisi prius faciant finem pro anno die et vasto De consuetudine tamen dicitur quod post annum et diem terre et tenementa felonum Gloucestr' redduntur et revertentur proximo Heredi cui debuerant descendisse si facta non fuisset felonia et in Kanc' in Gavelkynde the Fader to the Bough and the Sone to the Plough et ibidem omnes heredes masculi participant hereditatem similiter omnes femine set femine non participant cum masculis Et mulier post mortem viri sui habet medietatem pro dote sua et si fornicetur in viduitate perdit totum vel si sit desponsata viro.

'destroyed in the Houses, Woods, 'and Gardens, and in all Manner 'of Things belonging to the same 'Land, excepting Men of certain 'Places privileged by the King 'therefore. And after our Lord 'the King hath had the Year, 'Day, and Waste, then the Land 'shall be restored to the chief 'Lord of the same Fee, unless 'that he fine before with the King 'for the Year, the Day, and the 'Waste. Nevertheles it is used 'in the County of *Gloucester* by 'Custom, that after one Year and 'one Day the Lands and Tenements of Felons shall revert and 'be restored to the next Heir, to 'whom it ought to have descended 'if the Felony had not been done. 'And in *Kent*, in Gavelkind, '*(The Father to the Bough, the Son to the Plough,)* there all 'Heirs Males shall divide their 'Inheritance, and likewise Women; but Women shall not 'make Partition with Men. And 'a Woman after the Death of her 'Husband shall be endowed of the 'Moiety; and if she commit Fornication in her Widowhood, or 'take an Husband after, she shall 'lose her Dower'

No. 5.
17 Ed. II. Stat. 1
9 H. 3, stat. 1, c. 22.
Customs of Glocester, and Kent.
Stamf. Prerog. 20, b.
By 27 H. 8. c. 2 none but the King can pardon Felonies, or make Justices

No. 6.

1 Henry IV. c. 6.—In a Petition to the King, of Lands, Offices, &c. the Value shall be contained.

Ex Rot. in Turr Lond.

ITEM au fyn qe nostre dit Seignur le Roi en temps avenir ne soit deceuz en ses grauntes ou douns annuels ou en fee ou en acunes offices par lui a doners fairs ou graunters il voet de lassent des Seignurs espirituelx & temporelx susditz & a la request des ditz communes estre conseillez par les sages de son conseil es choses touchantz lestat de lui & de son Roialme sauvant toutefoitz sa libertee. Et voet & ad ordeinez & establiez de lassent susdit qe toutz ceux qi desore enavant demanderont du Roi terres tenementz rentes

'ITEM, To the Intent that our 'said Lord the King in Time 'to come shall not be deceived in 'his Grants or Gifts annual, or in 'Fee, or in any Offices by him to 'be given, made, or granted, he 'will, by the Assent of the Lords 'Spiritual and Temporal aforesaid, 'and at the Request of the said 'Commons, be counselled by the 'wise Men of his Council in 'Things touching the Estate of 'him and of his Realm, saving 'always his Liberty. Also he 'hath ordained and stablished by 'the Assent aforesaid, That all 'they which from henceforth do 'demand of the King, Lands,

1 H.
3 Co. 31.
32 H. 6, f2. 1

No. 6.
1 Hen. IV, c. 6.
Co. Lit. 133, a.
Expounded by 2 H. 4, c. 2.
Restrained by 6 H. 4, c. 2.

'Tenements, Rents, Offices, Annuities, or any other Profits, shall 'make express Mention in their 'Petitions of the Value of the 'Thing so to be demanded, and 'also of that which they have had 'of the King's Gift, or of other 'his Progenitors or Predecessors 'before. And in case they make 'not such Mention in their said 'Petitions, and that duly proved, 'the King's Letters Patents there'of made shall not be available, 'nor of any Force nor Effect, but 'wholly revoked, repealed, and 'adnulled for ever; to the Punish'ment of them which so have 'done Deceit to the King, as they 'that be not worthy to enjoy the 'Effect and Benefit of the Letters 'Patents to them granted in this 'Behalf.'

offices annuitees ou autres profitz qeconqes facent expresse mention en lour petitions de la value de la chose ensi a demander et auxi de ce qils ont eue du doun de Roi ou des autres ses progenitours ou predecessours pardevant. Et en cas qils ne facent tiel mention en lour ditz petitions et ce duement prove soient les lettres patentes du Roi ent faites nient vaillables ne de null force neffect Mais de tout revokez repellez et adnullez pur toutz jours au punissement de ceux qensi ont fait tiel deceit au Roi come ceux qi ne sont pas dignes denjoier leffect et benefice des lettres patentes a eux grauntez en celle partie.

No. 7.

8 Henry VI. c. 16.—By what Persons Escheators shall find an Office, and in what Time he shall certify it. A Patent made of Lands seised upon an Inquest.

8 H. VI. c. 16.
An Escheator shall take no Inquest, but by such Persons as be returned by the Sheriff.
Rast, p. 315.

ITEM, To eschew the Dolours, Grievances, and Disherisons, which daily do happen "to many of the King's liege "People by the Escheators, for "that they take Inquests, to en"quire before them, as well by "Virtue of the King's Writs, as "of their Offices, favourably and "not duly, by People not im"panelled nor returned to them "by the Sheriffs of the Counties, "and more often for their private "Gain, and for the Disherison of "the King's liege People, than "for the Profit of the same our "Lord the King, and also for "that the Lands and Tenements "of many of the King's liege "People be seised into the King's "Hands upon such Inquests, or "let to ferm by the Chancellor "or Treasurer, before such In"quests be returned in the Chan"cery;" 'our Lord the King 'hath ordained, by the Authority 'of this present Parliament, that 'no Escheator or Commissioner

ITEM pur eschuer lez dolours grevancez et disheretisons qi de jour en autre aveignant as plusours lieges nostre Seignur le Roy par les eschetours de ceo qils preignent enquestes denquerer devaunt eux sibien par vertue des briefs nostre Seignur le Roy come de lour office favourablement & noun duement par gentz nient empanellez ne retournex a eux par les viscountz des countes & pluistost pur lour propre gayne & pur disheretison des lieges nostre Seignur le Roy qe pur profit mesme nostre Seignur le Roy Et auxi de ceo qe les terres & tenementz des plusours lieges nostre Seignour le Roy sur tielx enquestes et autres et lessez par le Chaunceller ou Tresorer a ferme devaunt ceo qe mesmes les enquestes soient retournez en la Chancellarie nostre Seignur le Roy est ordine par auctorite de cest present parlement qe nul eschetour ne commissioner

No. 7.
8 Hen VI. c. 16

preigne ascunement ascun enquest denquerrer sinon des gentz retournez et empanellez par le viscount en le counte deins quell il est eschetour ou commissioner. Et si ascun eschetour ou commissioner preigne enqueste des gentz qi ne sount mye enpanellez ne retournez par le viscount come desuis est dit et ent par examination ou autrement al suite de partie qe pur luy mesmes ou par le Roy ou autre persone qeconqe voille pursuer soit convict duement pur chescun enquest ensy priz qe encourage la peine et forfaiture de xl. li. a paiers cestassaver lun moite au Roi et lautre moite au partie a qi suyte il serra convict: Et qe nulles terres ne tenementz scisez es mayns nostre Seignur le Roy sur enquestez prisez devaunt les eschetours ou commissioners ne soint ascunement lessez ne grauntez a ferme par le Chaunceller ou Tresorer dEngleterre ou autre officer, nostre Seignur le Roi qiconqe tanqe qe mesmes les enquestes et verditz soient retournez pleinement en la Chauncellarie ou en lescheque mes demoergent tautz tielx terres et tenementz entierment et continualment es mains nostre Seignour le Roy tanqe les ditz enquestes et verditz soient retournez et par un mois apres mesme le retourne si issent ne soit qe celuy ou ceux qi sente ou sentent eux grevez par mesmes les enquestes ou oustez de lour terres ou tenementz veignent en la Chauncellarie et soy proferont de traverser lez ditz enquestes et soy offeront de prendre mesmes les terres et tenementz a ferme. Et qe si issent fount qe adonqes mesmes lez terres et tenementz soient commiz a eux sils moustrent bones evidencez provantz lour travers estre verrois solonc la fourme de lestatut fait lan xxxj° le Roy E. tiers puis le con-

'take in any wise any Inquest to 'inquire, but of People returned 'and impanelled by the Sheriffs 'in the County within which he 'is Escheator or Commissioner. 'And if any Escheator or Commissioner take Inquests of People, which be not impanelled 'nor returned by the Sheriff, as is 'aforesaid, and thereof by Examination, or otherwise, at the 'Suit of the Party, which for 'himself or for the King, or any 'other Person that will sue, be 'duly convict, for every Inquest 'so taken that he incur the Pain 'and Forfeiture of xl. li. to be 'paid, that is to say, the one 'Half to the King, and the other 'Half to the Party grieved, at 'whose Suit he shall be convict. 'And that no Lands nor Tenements seised into the Hand of 'our Lord the King, upon such 'Inquest taken before the Escheators or Commissioners, be 'not in any wise let or granted* to 'ferm by the Chancellor or Treasurer of *England*, or any other 'the King's Officer, until the 'same Inquests and Verdicts be 'fully returned in the Chancery, 'or in the Exchequer, but all such 'Lands and Tenements shall intirely and continually remain in 'the Hands of our Lord the King, 'until the said Inquests and Verdicts be returned, and by a 'Month after the same Return, if 'it be not so that he or they 'which feel them grieved by the 'same Inquests, or putting out 'of their Lands or Tenements, 'come into the Chancery, and 'profer themselves to traverse the 'said Inquests, and then offer to 'take the same Lands or Tenements to ferm; and if they do so, 'that then the same Lands or 'Tenements be committed to 'them, if they shew good Evidence, proving their Traverse to 'be true, after the Form of the 'Statute made the thirty-sixth 'Year of King Edward III. after

Whe Lands seised King Hands upon Inquest of Office shall be let to ferm.
13 H. 6, c. 6.

The Lands shall be let to ferm to him that tendereth a Traverse to the Office.
36 Ed. 5, st. 1 c. 13.
1 H 8, c. 10.
23 H. 6, c. 17
Kel. f. 178.
36 Ed. 3, st. c. 13.

* This Act and 18 H. VI. c. 6, post No. 9, extend to the Case of Land to which the Crown is intitled by Escheat, and also to prevent recovering, on the Demise of the King, in Ejectment.—Doe v. Redfern, 12, I. 96, where the Subject is very elaborately discussed.

No. 7.
8 Hen VI. c 16.

'the Conquest, to hold until the 'Issue taken upon the same Traverse be found and discussed for 'the King, or for the Party, finding sufficient Surety to pursue 'the said Traverse with Effect, 'and to render and pay to our 'Lord the King the yearly Value 'of the Lands where the Traverse 'shall be so taken, if it be discussed for the King And if 'any Letters Patents of any of the 'Lands or Tenements be made to 'the contrary to any other Person, 'or let to ferm within the said 'Month, after the said Month of 'Return, they shall be holden for 'none. And that the Escheators 'or Commissioners, upon Pain 'of the Forfeiture of xx. li. to be 'paid, that is to say, the one Half 'to the King, and the other Half 'to the Party at whose Suit he 'shall be convict, return the Inquests, before them taken into 'the Chancery of our Lord the 'King, or into the Exchequer, 'within a Month next after the 'taking of the same. And every 'Man which will sue for the 'King shall have the Suit in this 'Behalf. Provided always, That 'this Statute begin and take Effect and Force in the Feast of '*Easter*, next coming, and not 'before, to endure for ever.'

Escheators & Commissioners shall return an Office found before them
18 H. 6, c. 7.

quest a tenir tanqe lissue sur mesme le travers pris soit et discussu pur le Roy ou pur le partie trovant sufficiant suerte de suir le dit travers ove effect et de rendre et paier a nostre Seignur le Roy le annuel value des tenementz dont le travers ensi serra priz sil soit discusse pur le Roy. Et si ascuns lettres patentz des ascuns terres ou tenementz soient faitz au contrarie a ascuns autre persone ou lessez a ferme deins le dit moys apres le dit mois du retourne soient voidez et tenuz pur null. Et qe les eschetours et commissioners sur peine de forfaiture de xx li. a paiers cestassavoir lun moite al Roi & lautre moite al parte a qi suyt il serra convict retournent en la Chauncellarie nostre Seignur le Roy ou en lescheqer les enquestes devaunt eux prisez deins un moys proscheyn apres la prise dicelles. Et eyt chescun qi voet suyr pur le Roy la suyte en cell partie. Purveu toutz foitz qe cest estatut commence et preigne effect et force en la fest de Pasqe proschein avenir a durer pepetuelment et nemye devaunt.

No. 8.

18 Henry VI. c. 1.—Letters Patent shall bear the Date of the King's Warrant delivered into the Chancery.

18 Hen VI c. 1.

"FIRST, Whereas by Suit "made to the King by divers "Persons, it hath been desired by "their Petitions, to have Offices, "Ferms, and other Things of the "Gift and Grant of the King by "his gracious Letters Patents "thereof to them to be made, "desiring by the same Petitions, "the same Letters Patents of the "King to bear Date at a certain "Day limited in the same, the "which Day is often long before "the King's Grant to them "thereupon made have born the

PRIMEREMENT come par suite fait au Roy par divers gentz ad este desire par lour petitions daver offices fermes & autres choses del don & graunte du Roy par sez gracious lettres patentz eat a eux a faire desiraunts par icell petitions mesmes les lettres patentz du Roy de porter date a certein jour limite en icell le quell jour est sovent longement devaunt la graunte du Roy a eux faitz de lour ditz petitions parount les lettres patentz du Roy a eux sur

No. 8.
18 Hen. VI. c. 1.

ceo faitz ount porte mesme la date a cause de quell divers lieges du Roy eiantz tielx offices fermes et autres choses du don ou graunte du Roy par sez gracious lettres patentz a eux longe temps devaunt duement fait par tielx subtils y maginations de tiels antedates desirez par tiels petitions de tiels offices fermes & autres chosez sovent ount este oustes amoyes & expelles encountre droit bon conscience & reason. Nostre dit Seignur le Roy voillant oustier tiels ymaginations del avys & assent des Seignurs espirituelx et temporelx et al especiale request des ditz Communes ad ordine par auctorite de mesmes le parlement qe de qeconqe garrent en apres par mesme nostre Seignur le Roy ou sez heires al Chaunceller dEngleterre pur le temps esteant addresse le jour du livere dicell al Chaunceller soit entre du recorde en la Chauncerie & qe le Chaunceller face faire lettres patentes sur mesmes les garrantz portantz date le jour du dit livere en la Chauncellerie & nemy devaunt en null manere & si ascuns lettres patentes soient desore faitz al contrarie soient voidez irritez & tenuz pur nulles.

" same Date, by reason whereof " divers of the King's liege People " having such Offices, Ferms, " and other Things of the Gift or " Grant of the King, by his " gracious Letters Patents thereof " to them long Time before duly " made, by such subtil Imagina- " tion of such Antedates desired " by such Petitions, of such Of- " fices, Ferms, and other Things, " often have been put out, " amoved, and expelled, against " Right, good Conscience, and " Reason :" ' Our said Lord the ' King, willing to put out such ' Imaginations, by the Advice and ' Assent of the Lords Spiritual ' and Temporal aforesaid, and at ' the special Request of the said ' Commons, hath ordained, by ' Authority of the same Parlia- ' ment, That of every Warrant ' hereafter sent by the same our ' Lord the King, or his Heirs, to ' the Chancellor of *England* for ' the Time being, the Day of the ' Delivery of the same to the ' Chancellor shall be entered of ' Record in the Chancery; and ' that the Chancellor do cause ' Letters Patents to be made upon ' the same Warrant, bearing Date ' the Day of the said Delivery in ' the Chancery, and not before in ' any wise; and if any Letters ' Patents be from henceforth ' made to the contrary, they shall ' be void, frustrate, and holden ' for none.'

Plow. f. 491. 20 H. 7, f. 8. Dyer, f. 135.

No. 9.

18 Henry VI. cap. 6.—No Lands shall be granted by Letters Patents, until the King's Title be found by Inquisition.

18 Hen. VI. c. 6.

ITEM come en le parlement tenuz a West' lendemayn de Seint Mathe lappostel lan du reigne nostre Seignur le Roy qorest viij^me ordine soit entre autres qe nulles terres ne tenementz seisiez en mayns le Roy sur enquestes prises devaunt les eschetours ne commissioners ne soient ascunement lessez ne grauntez a

" ITEM, whereas in a Parlia- " ment holden at *Westminster*, " the Morrow after St. *Matthew* " the Apostle, the Eighth Year of " the Reign of our Lord the King " that now is, among other Things " it was ordained, That no Lands " or Tenements seised into the " King's Hands upon Inquests " taken before the Escheators or " Commissioners, shall not be

8 H. 6, c. 16.

No. 9.
18 Hen. VI. c.

" granted nor let in any wise to " ferm by the Chancellor, or Treasurer of *England*, or any other " the King's Officer, until the " same Inquests and Verdicts be " fully returned into the Chancery, or into the Exchequer, " but all such Lands and Tenements shall wholly and continually remain in the King's " Hands, until the said Inquests " and Verdicts be returned, and " by a Month after the same Return; if it be not so that he " or they which feel themselves " grieved by the same Inquests, " or put out of their Lands or " Tenements, come into the " Chancery, and offer themselves " to traverse the said Inquests, " and offer themselves to take the " same Lands or Tenements to " ferm; and if they so do, that " then the same Lands and Tenements shall be committed to " them, if they shew good Evidences proving their Traverse to " be true, according to the Form " of the Statute made the Six and " Thirtieth Year of Edward the " Third, to hold until the Issue " taken upon the same Traverse " be found and discussed for the " King, or for the Party, finding " sufficient Surety to pursue the " said Traverse with Effect, and " to yield and to pay to the King " the yearly Value of the Lands " or Tenements, whereof the Traverse shall be so taken, if it be " adjudged for the King; and if " any Letters Patents of any Lands " or Tenements be made to any " other Person to the contrary, or " let to ferm within the said " Month of the Retern, they shall " be void, and holden for none. " The which good Statute and " Ordinance divers Persons devising to subvert, and by their " Subtility to serve as for no Purpose, have sued to obtain such " Gifts and Grants, and Ferms, " by the King's Letters Patents, " before any Inquisition or Title " found for the King of the same, " pretending such Gifts and Grants " not comprised nor remedied by " the said Statute, notwithstand-

2 Leon. 124, 185.
Goldsb. 21, pl. 1.
Savil 70.

36 Ed. 3, c. 13.

ferme par Chauncellor ou Tresorer dEngleterre ou autre officer le Roy qeconqe tanqe mesmes les enquestes & verditz soient retournez plainement en la Chauncerie ou en lescheqer mes demurgent toutz tielx terres & tenementz entierment & continuelment en lez mayns le Roy tanqe les ditz enquestes & verditz soient retournes & par un moys apres mesme le retourne si issint ne soit qe ceux ou celuy qi sente ou sentent eux greves par mesmes les enquestz ou oustes de lour terres ou tenementz veignent en la Chauncery & soy proferont de traverser les ditz enquestes & soy offeront de prendre mesmes les terres & tenementz a ferme soient commys a eux sils monstrent bons evidences provauntz lour traverse estre veroiez solonc la fourme de lestatuit fait lan xxxvi[me] le Roy E. tierce a tener tanqe lissue sur mesme le traverse pris soit trove & discusse pur le Roy ou pur le partie trovent suffisaunt surete de suer le dit traverse ove effecte & de rendre & paier au Roy lannuell value des terres ou tenementz dount la traverse ensy ferra pris sil soit discusse pur le Roy & si ascuns lettres patents des ascuns terres ou tenementz soient faitz a contrarie a ascun autre persone ou lesse a ferme deinz le dit moys de retourne soient voidez & tenuz pur null. Le quel bon estatuit & ordenaunce divers persones ymaginantz a subverter & par lour subtilite de servir come de null pursuount daver tielx dones grauntes & fermes par lettres patentes du Roy devaunt ascun inquisition ou title trove pur le Roy dicelx pretendauntz tielx dones & grauntes nient estre comprise ne remedies par le dit estatuit nient obstant qil

est en owell meschief de le dit estatuit. Nostre Seignur le Roi considerant les premisses & voillant en ceo partie purvoier de remedie ad ordeigne par lauctorite desuisdit qe nullez lettres patentes soient faitz a ascun persone ou persones dascunes terres ou tenementz devaunt inquis' de title du Roy en yceux trove en sa Chauncerie ou en son Eschequyr retourne si title du Roy en yceux ne soit trove de recorde ne deinz le moys apres mesme leretourne sil ne fuit a celuy ou ceux qi tende ou tendent lour traversez come desuis est dit & si ascuns lettres patentes soient faitz a contrarie soient voides & tenuz pur null.

" ing that it is in like Mischief of " the said Statute.' 'Our said ' Lord the King, considering the ' Premisses, and willing to provide due Remedy in this Behalf, ' hath ordained, by the Authority ' aforesaid, that no Letters Patents ' shall be made to any Person or ' Persons of any Lands or Tenements, before Inquisition of the ' King's Title in the same be found ' in the Chancery or in his Exchequer returned, if the King's Title ' in the same be not found of Record, nor within the Month after ' the same Return, if it be not to ' him or them which tender their ' Traverses as afore is said; and if ' any Letters Patents be made to ' the contrary, they shall be void, ' and holden for none.'

No. 9.
18 Hen VI. c. 6.

Bro. Office, 56.
Fitz. Grant. 91.
Dyer, f. 146.

March 84.
1 H. 8, c. 10.

No. 10.

18 Henry VI. c. 7.—In what Time an Escheator shall return an Office found before him.

ITEM ordeigne est par lauctorite desuisdit qe en cas qe ascun eschetour preigne ascun office devaunt luy & ne retourne mesme loffice en la Chauncerie ou leschequyr du Roy deins le moys apres la prise dicell qil outre la peyne de xl. li. les queux il ad forfait par lestatut fait lan du reigne nostre dit Seignur le Roy oeptisme soit tenuz a paier a mesme nostre Seignur le Roy a taunt come il est endamage a cause de non retourne de tiel office. Et qe le Chaunceller dEngleterre apelle a luy le Tresorer dEngleterre en lessant tieux fermes pur due execution faire de dit estatut fait le dit an oeptisme.

' ITEM it is ordained by the ' Authority aforesaid, That in ' Case that any Escheator take any ' Office before him, and return ' not the same Office in the Chancery, or in the King's Exchequer, in the Month after the ' taking of the same, he shall incur the Pain of xl. li. which he ' hath forfeited by the Statute ' made the Eighth Year of our ' said Lord the King; and also he ' shall be charged to pay to the ' same our Lord the King as much ' as he is indamaged in Respect of ' not returning of such Office; ' and that the Chancellor of *England* call to him the Treasurer of ' *England* in letting such Ferms, ' to make due Execution of the ' said Statute made in the said ' Eighth Year.'

18 Hen. VI. c. 7.

8 H. 6, c. 16.

No. 11.

1 Henry VIII. c. 8.—The Act of Escheators and Commissioners.

1 H. VIII. c. 8

'FORASMUCH as divers of the King's Subjects lately have been 'sore hurt, troubled, and some disherited by Escheators and 'Commissioners, causing untrue Offices to be found, and sometime 'returning into the Courts of Record Offices and Inquisitions that 'were never found, and sometime changing the Matter of the Offices 'that were truly found, to the great Hurt, Trouble, and Disherison of 'the King's true Subjects, that like before Time hath not been seen 'in this Realm:' Wherefore be it ordained, established, and enacted in this present Parliament, and by Authority of the same, That if any Escheator or Commissioner hereafter return or put into any of the King's Courts any Inquisitions or Offices concerning Lands, Tenements, or other Hereditaments, not found nor presented by the Oaths of Twelve Men, and indented, and by them sealed, that then the same Escheator or Commissioner forfeit for every such Office or Inquisition so returned, and put into any of the said Courts, an *C. li.* to the Party or Parties grieved by any such Inquisition or Office: And that from henceforth no Escheator, ne no Man sit by Virtue of any Commission, to inquire of Lands, Tenements, or other Hereditaments, except he, or other to his Use, have Lands, Tenements, or Hereditaments, of the yearly Value of *xl.* Marks, above all Charges and Reprises, upon Pain of *xx. li.* And that it shall be lawful for all Persons that be not sufficient of Freehold in Possession or Use at the Time of any such Commission to them delivered, to refuse to sit and inquire by Virtue of the same Commission.

No Office shall be returned but which is found by a Jury.

What Land an Escheator or Commissioner must have.

II. And that they, upon Process made against them out of the King's Exchequer by Virtue of the same Commissions, to be discharged upon their Oaths for their said Nonsufficiency, without Fine or Fee.

The Escheator shall sit in an open Place, and suffer every Person to give Evidence
34 Ed. 3, c. 13
36 Ed. 3, c. 13.
23 H. 6, c 17.

III. And that every Escheator and Commissioner shall sit in convenient and open Places, according to the Statutes heretofore made: And that the said Escheators and Commissioners shall suffer every Person to give Evidence openly in their Presence, to such Inquest as shall be taken before any of them, upon Pain of *xl. li.*

What Lands those Jurors must have.

IV. And that no Sheriff, nor other Person, which shall or ought to return Writs or Precepts, return before Escheators, or such Commissioners, any Person or Persons to inquire of any Lands or Tenements, except every of the same Jury so returned, or other to their Use, have Lands or Tenements of the yearly Value of *xl. s.* within the same Shire where the same Inquiry shall be made, without Fraud or Collusion, above all Charges and Reprises, upon Pain of Forfeiture for every Person so returned *C. s.* And that the Jury that shall be sworn before any Escheator, or such Commissioner, to enquire of Lands, Tenements, or other Hereditaments, shall receive the Counterpane of the Office or Inquisition that by them shall be presented, indented and sealed by the Escheator, or by such Commissioner, and the same deliver and suffer to rest in the Possession of the first Person that shall be sworn in the said Jury, with him to remain, to the Intent that the said Commissioner or Escheator may not change nor imbesil the said Offices or Inquisitions; and this to be done upon Pain of every of the said Persons that shall be sworn, *xx. s.* And that every Escheator and Commissioner, (after a Jury or Inquest before any of them sworn, be ready to give their Verdict or Presentment, and offer to present the same) that the said Escheator or Commissioners, or Part

The Jury must receive the Counterpane of an Office found, and leave it with the First Man.

An Escheator must receive an Office found by the Jury.

No 11.
1 H. VIII. c. 8.

of them, shall receive the same Verdict without further Delay, upon Pain of *C. li.* and deliver the Counterpane of the Indenture to the Jury, in Form above rehearsed, upon like Pain. And that if the Clerk of the Petit Bag of the King's Chancery for the Time being, or his Deputy or Deputies, or any other Officer there, having Authority to receive any such Office or Inquisition, to whose Hands any such Office or Inquisition shall come, which ought to be returned into the said Chancery, will not receive the same Office or Inquisition, and put it on the Files to remain of Record, within Three Days after it be received or offered to him to be received, he to forfeit for every such Default *xl. li* And the Commissioners or Escheator before whom the same Office or Inquisition is found, (and as is aforesaid) offered to be delivered into the Chancery, to be discharged of the Penalty of *xl. li* limited by Statute for non-returning of the same Office or Inquisition within the Month; and that the like Law and Penalty be to charge the Officer or Officers of the King's Exchequer for the Time being, which ought to receive Inquisitions or Offices returnable into the same Exchequer, for refusing so to receive them; and that the Commissioners or Escheator, before whom the said Inquisitions or Offices be found, be discharged of the Penalty of the Statute for non-returning of the same Inquisitions or Offices, so that then the said Escheator or Commissioners, at any Time after the Month of any such Offices before them or any of them taken, within another Month then next ensuing, return the said Office into the Chancery or Exchequer, as the Cause shall require; and that the said Clerk of the Petit Bag for the Time being certify, or cause to be certified, the Transcript of every such Office or Inquisition, taken before any Commissioners or Escheator, to the King's Exchequer the next Term following the Receipt thereof, upon Pain of Forfeiture for every such Default *C. s.* And that no Man be compelled, after the Feast of *All Saints* next coming, to occupy nor exercise the Office of an Escheator by any one Patent over One whole Year; and that he that is once Escheator, shall not be made Escheator again within Three Years after the foresaid whole Year ended. And if any Escheator after the Feast of *All Saints* be made Escheator, or exercise his Office by Reason of one Patent over the Time of one whole Year ended, or be made Escheator within three Years after, as is aforesaid, that then after the said whole Year in Form aforesaid ended, his Patent so made to be void and of none Effect; and that the Party or Parties so grieved, shall have his or their Recovery of every the said Forfeitures of one *C. li* by Action of Debt, in which Action the Defendant shall not wage his Law, nor be by Protection nor Essoign, &c. And the Residue of the other Forfeitures expressed in this present Act, the King shall have the one Moiety thereof, and the Party that will sue therefore by Action of Debt the other Moiety; and the Defendant shall have no other Delay, but as is aforesaid.

An Officer of the Chancery must receive an Inquisition found offered unto him, and put it on the Files
Dyer, f. 170.
8 H. 6, c. 16.
18 H. 6, c. 7.

Officers of the Exchequer must receive Offices found and tendered unto them
13 Ed. 4, c. 8.

A Transcript of an Office shall be certified into the Exchequer.

None shall be Escheator above a Year.

The Penalties of the Offenders, and who shall have the Benefit of them, and by what Means.

V. Provided alway, That this Act concerning Escheators for exercising of their Office over an whole Year together, and the Letters Patents or Grants made or to be made by any Escheator for Term of Life, or for Years, or otherwise, extend not ne be prejudicial to any Escheator that now is, and that hereafter shall be made and ordained in any City or Town Corporate, or in the Duchies of *Lancaster*, *Cornwall*, and the Counties Palatines of *Lancaster*, *Chester*, *Durham*, or *Ely*, or to any other County Palatine within the Realm of *England*, *Wales*, or the Marches of the same; or to any Escheator made, or hereafter to be made, by any Person or Persons Spiritual or Temporal, having Authority by Reason of any Franchises, Liberties, Privileges, Prescriptions, or Grant, to depute or make any such Escheator in the same.

Who may be Escheators above one Year, and by what Means.

No. 11. 1 H. VIII. c. 8.

In what Places the foresaid Sufficiency of Freehold in Escheators or Jurors is not necessary.

VI. Provided also, That this Act, as to any Penalty in the same concerning the Sufficiency of Escheators and Jurors aforesaid, extend not, nor be prejudicial to any Escheator in City or Towns Corporate, ne to any other Escheator made, or hereafter to be made, by any Person or Persons having Privilege to make Escheators for Inquisitions of Lands, Tenements, or Hereditaments, ne to any Sheriff or Bailiff for returning in any Panel any Person or Persons before any of the said Escheators, of less Value than is contained in the said Act; the Escheator of the County Palatine of *Lancaster* and *Chester* in this Proviso only foreprised and excepted

Justices of Peace shall not be prejudiced by this Act.

VII. Provided also, That this Act extend not, nor be prejudicial to any Justices of the Peace, for any Thing done concerning the Commission of the Peace.

Confirmed and made perpetual by 3 H. c. 2.

VIII. Provided also, That nothing penal contained in this present Act take Effect before the Feast of *Easter* next coming; and this Act to endure to the next Parliament.

No. 12.

1 Henry VIII. c. 10.—An Act to enlarge a Statute for the Traverse of Lands seised in the King's Hands before Escheators.

1 H. VIII. c. 10.

8 H. 6, c. 16.

'WHEREAS by a Statute made the Eighth Year of the Reign of King HENRY the Sixth, it is ordained, among other Things, that no Lands and Tenements seised into the King's Hands upon Inquests taken afore the Escheator or Commissioners, shall in no wise be let or granted to Ferm by the Chancellor of *England*, or any other Officer of the King's, whatsoever he be, till the same Inquests and Verdicts be returned plainly into the Chancery, or into the Exchequer; but that all such Lands and Tenements shall abide wholly and continually in the King's Hands, until the same Inquests and Verdicts be returned, but it be so, That he or they that be grieved by the same Inquests, or put out of their Lands and Tenements, come into the Chancery, and offer to traverse the same Inquests, and offer to take the same Lands and Tenements to Ferm; and if they do so, then the same Lands and Tenements be committed unto them, if they shew good Evidence proving their Traverse to be true, and find Surety after the Form of the said Statute, as in the same Statute more at large appeareth.

'II. And notwithstanding the said Statute, divers Escheators and Commissioners, which have taken such Inquests after the Death of the King's Subjects, of their Covin, to the Intent to put them that had Cause of Traverse to the Verdicts of the said Inquests from the Ferm of the Premisses, would in the Time of Vacation put into the Chancery or into the Exchequer, their said Office by them taken, because the Month should pass before the Beginning of the Term next ensuing, by reason whereof they that should of Right have the Ferm upon their Traverse according to the true Intent of the said Statute, were put from the same Ferms contrary to Right and good Conscience.'

Lands seised into the King's Hands upon an Inquest of Office, shall be let to ferm to him that tendereth a Traverse to the same within three Months.

III. For Remedy whereof be it ordained, enacted, and established by Authority of this present Parliament, That from henceforth, after such Office found afore any Escheator or Commissioner, and put into Chancery or the Exchequer, if any Person or Persons which will tender a Traverse to the said Office, and desireth to have the Lands contained in the same Office to Ferm, and findeth Surety, and

sheweth Evidence to the Chancellor of *England* for the Time being, according to the Statute afore rehearsed, come into the Chancery within Three Months next after the same Office so put into the Chancery or Exchequer, that he be then by the said Chancellor thereto admitted; and that then all other Patents or Grants hereafter to be made thereof within the said Three Manths ended, be void and of none Effect; the said Statute made the Eighth Year of the Reign of King Henry the Sixth, or any other Statute made to the contrary notwithstanding.

No. 12. 1 H. VIII. c. 10. 36 Ed. 3, c. 13. 8 H. 6, c 16. 18 H. 6, c. 6, 7.

No. 13.

27 Henry VIII. c. 28.—All Monasteries given to the King, which have not Lands above two hundred Pounds by the Year.

No. 14.

31 Henry VIII. c. 13.—An Act for Dissolution of Monasteries and Abbies.

No. 15.

32 Henry VIII. c. 20.—Concerning Privileges and Franchises.

32 H. VIII. c. Co. pl. f. 140, 316.

WHERE divers and sundry Sites, Circuits and Precincts of late Monasteries, Abbathies, Priories, Nunneries, Colleges, Hospitals and other Ecclesiastical and Religious Houses and Places, and divers Honours, Castles, Manors, Messuages, Lands, Tenements, Liberties, Privileges, Franchises and other Hereditaments, by divers and sundry Statutes heretofore made, been assigned, limited and appointed to the Order, Rule, Survey and Governance of the Court of our Sovereign Lord the King, called the Court of Augmentations of the Revenues of his Crown, and of the Chancellor, Officers and Ministers of the same, by the which Statutes it is not fully, plainly nor expressly declared or rehearsed, how and in what wise, and by what special Officers and Ministers, the Liberties, Privileges and Franchises, which the late Owners of the same Sites, Circuits, Precincts, Honours, Castles, Manors, Messuages, Lands, Tenements and other the Premises had, used and exercised, should be ordered, used, exercised and put in Execution:' Be it therefore enacted by the King our Sovereign Lord, with the Assent of the Lords Spiritual and Temporal, and of the Commons, of this present Parliament assembled, and by the Authority of the same, That all and singular the same Liberties, Franchises, Privileges and temporal Jurisdictions, which the said late Owners had, used and exercised lawfully, by themselves, or by their Officers or Ministers, or might have used or exercised, within three Months next before that the said Sites, Circuits, Precincts, Honours, Castles, Manors, Messuages, Lands, Tenements and other the Premisses, came to the Possession of the King's Highness, shall be by Virtue of this present Act revived, and be really and actually in the King's Highness, his Heirs and Successors, and shall be in the Rule, Order, Survey and Governance of the King's said Court of Augmentations of the Revenues of his Crown, and of the Chancellor, Officers and Ministers of the same; and that the same

The same Franchises that the late Owners of Religious Houses had within 3 Months before their Dissolution shall be revived, and be actually in the King, and in the Survey of the Court of Augmentations. Moor 297.

No. 15. 32 H. VIII. c 20. Liberties, Franchises, Privileges and Temporal Jurisdictions, and all manner Fines, Issues, Amerciaments, and other Profits and Commodities, of what Kinds or Natures soever they be, coming, growing or rising by Reason or Occasion of them, or any of them, shall be used, exercised and occupied to all Intents, Purposes, Conditions and Respects, and shall be claimed, levied, collected and taken by such Stewards, Bailiffs, and other Officers and Ministers, as shall please the King's Highness to name and appoint, in like Manner, Form, Fashion and Condition as they or any of them were lawfully used, exercised, executed, claimed, levied, collected and taken, before that they came to the Hands and Possession of our said Sovereign Lord; and that the same Stewards, Bailiffs, Officers and Ministers, shall be accomptant for the Issues and Revenues of their Bailiwicks and Offices, and shall be compelled to account in the said Court of Augmentations, like as the King's Receivers or other Officers Accomptants in the said Court heretofore have done or ought to do.

'II. And where also divers and sundry Sites, Circuits and Precincts of late Monasteries, Abbies, Priories, Nunneries, Colleges, Hospitals and other Ecclesiastical and Religious Houses and Places, and also divers Honours, Castles, Manors, Messuages, Lands, Tenements, Liberties, Privileges, Franchises and other Hereditaments, which been comen to the King's Hands by Attainder or Attainders of High Treason, been assigned, limited and appointed to the Order, Rule, Survey and Governance of the King's general Surveyors; and forasmuch as it is not fully, plainly nor expressly known or declared, how and in what wise, and by what special Officers or Ministers the temporal Liberties, Privileges, Franchises and temporal Jurisdictions, which the late Owners of the said Sites, Circuits, Precincts, Honours, Castles, Manors, Messuages, Lands, Tenements and other the Premisses had, used and exercised, should be ordered, used and put in Execution:' Be it therefore enacted by Authority aforesaid, That all and singular the same Liberties, Franchises, Privileges and temporal Jurisdictions, which the late Owners of the said Sites, Circuits, Precincts, Honours, Castles, Manors and other the Premisses, which been come into the King's Hands by Attainders, as is aforesaid, lawfully had, used and exercised by themselves, or by their Officers or Ministers, or which they might have used or exercised, within three Months next before that the same Sites, Circuits, Precincts, Honours, Castles, Manors and other the Premisses, came to the Possession of the King's Highness, shall be by Virtue of this Act revived, and be really and actually in the King's Highness, his Heirs and Successors, and shall be in the Rule, Order, Survey and Governance of the King's said General Surveyors, and of the Officers and Ministers of the same; and that the same Liberties, Franchises, Privileges and Temporal Jurisdictions, and all manner of Fines, Issues, Amerciaments and other Profits and Commodities, of what Kinds or Natures soever they be, coming, growing or rising by Reason or Occasion of them, or any of them, shall be used, exercised and executed to all Intents, Purposes, Conditions and Respects, and shall be claimed, levied, collected and taken by such Stewards, Bailiffs and other Officers and Ministers as shall please the King's Highness to name and appoint for the same, in like Manner, Form, Fashion and Condition as they or any of them were used, exercised, executed, claimed, levied, collected and taken before they came to the Hands and Possession of our said Sovereign Lord by Attainder, as is aforesaid; and that the said Stewards, Bailiffs, Officers and Ministers thereof, shall be accomptant for the Issues and Revenues of their Baillwicks and Offices, and shall be compelled to account before the said General Surveyors, as other Officers Accomptants in that Court heretofore have done, or ought

Those Lands, &c of the late Abbies which came to the King by Attainder shall be in the Order of the General Surveyors.

III. And be it enacted by the Authority aforesaid, That the said Stewards, Bailiffs and other Officers and Ministers, shall be attendant and obedient to all other the King's Courts, as well for all Executions and Returns of Writs, Warrants and Precepts, as for their personal Appearances, and other Duties of their Offices, like as the Officers and Ministers of the said late Owners did and ought to do, or should have done, by Reason of their said several Offices, before that the same Liberties, Privileges and Temporal Jurisdictions did come to the Possession of our said Sovereign Lord, and that to be done and observed upon all Pains and Penalties by the Laws of this Realm limited and ordained for any Offence or Default in the same: And that no Sheriff, Under-Sheriff, nor other Officer or Minister of any Sheriff or other foreign Officer or Minister, shall in any wise intromit or meddle in, with or upon any of the Premisses, otherwise or in any other Manner, nor for any other Cause, than they or any of them lawfully might have done before the same Premisses did come to the Possession of our said Sovereign Lord.

No. 15.
32 H. VIII. c. 20.

The Jurisdiction of the Stewards & Bailiffs of those Liberties that were late the Abbeys, &c. and their Attendance to the King's Court.

IV. Provided always, and be it enacted, That all and singular Persons and Bodies Politick, and the Heirs, Successors and Assigns of every of them, shall have, hold and enjoy, use, execute and exercise as well by themselves, their Officers, Servants and Ministers, as by and for their Tenants, Farmers and Resiants, all and singular Liberties, Privileges and Franchises, which they or any of them now have by or from the King's Majesty by any Letters Patents, Indentures, Writings under any his Highness Seals, or by Authority of Parliament, or otherwise, or by the lawful Grant or Lease of any Person or Persons, or by any other Means or lawful Title, in as large, ample and beneficial Manner, to all Intents, Respects and Purposes, as they or any of them now have, or of Right ought to have, the said Liberties, Franchises and Privileges, or any of them, and as though this Act had never been had ne made: any Thing above written notwithstanding, the Privileges of Sanctuaries, Church, Church-yards or Cemeteries, for Tuition of Transgressors and Offenders only excepted; saving to all and singular Persons and Bodies Politick, and the Heirs, Successors and Assigns of every of them, all such Office and Offices, Fees, Annuities, Profits and Commodities, which they or any of them now have, or of Right ought to have, in or upon, or by Reason of the said Sites, Circuits, Precincts, Castles, Honours, Manors, Messuages, Lands, Tenements, Liberties, Franchises, Privileges and other the Premises, or in any Part or Parcel of them, in as large and ample Manner, Form, Fashion and Condition, to all Respects and Purposes, as if this Act had never been had nor made: any Thing in this Act to the contrary thereof notwithstanding.

Every Person may use such Liberties as he hath by the King's Grants or otherwise.

Saving to all Persons their Offices, Fees, Annuities & Profits out of any of the Lands of any Abbeys, &c.

V. And furthermore, be it enacted by the Authority of this present Parliament, That the Chancellor of the said Court of Augmentations now being, and every of his Successors, being Chancellor of that Court, and the King's General Attorney, and his Grace's Attorney of the said Court of Augmentations for the Time being, and every of them, and their Successors, and the Successors of every of them, shall have full Power and Authority, by Virtue of this Act, to take to the Use of the King our Sovereign Lord, his Heirs and Successors, Knowledges of all Manner of Concords for Fines thereupon to be had and recorded in the Court of our said Sovereign Lord the King, and of his Heirs and Successors, commonly called the Common Place, of and upon all and singular Manors, Lordships, Lands, Tenements and other Hereditaments, being, and which by Reason of those Fines or otherwise shall be, under the Order, Rule or Survey of the said Court of Augmentations, without any Fine or Fee to be paid for the same; and that the Judges and Justices for the

No. 15.
32 H. VIII. c. 20.

Time being of the said Court called the Common Place, and their Successors, shall accept, receive and allow all the said Knowledges of Concords by the said Chancellor and Attorneys, or any of them, to be certified and delivered unto the said Court called the Common Place.

Deeds may be inrolled in the Court of Augmentations to the King.

VI. And the same to be as effectual in the Law to all Intents and Purposes, as if the same Knowledges of Concords had been made, taken or acknowledged before the chief Judge of the said Common Place out of the same Court, or openly in that Court; and also that the said Chancellor and Attorneys for the Time being, and every of them, and the Successors of every of them, shall have full Power and Authority to take Knowledge for Inrollments of all Deeds made or to be made to the Use of the King our Sovereign Lord, his Heirs and Successors, of any Manors, Lands and Tenements, and of all Obligations to be made to the King, his Heirs and Successors, or to any other Person or Persons to the Use of the King, his Heirs and Successors, for any Matter or Cause concerning the said Court of Augmentations, or concerning the said Manors, Lands and Tenements, without any Fee, Gift or Reward, by them or any of them to be taken therefore: And the same Deeds, so knowledged, to be inrolled or registered in the said Court of Augmentations, and so being there inrolled or registered among other Records there remaining, and the Inrollments and Registrings of the same, to stand and be of Record, and of as good Strength and Effect, as if the same were or had been knowledged before any other Judge or Justice of Record, and inrolled in any other Court of Record.

Inrollments in the Court of Augmentations of all Deeds made to the Use of the King, and of all Obligations.

The King's Officers may keep Court within the Verge, and his Clerk of the Market only execute his Office there.
27 H. 8, c. 2.

VII. Provided alway, and be it enacted by the Authority aforesaid, That in all such of the said Liberties, Franchises and Places privileged, and in every of them limited to the said Court of Augmentations, and to the Surveyor's Court, wheresoever the King's Highness in his own most Royal Person shall come to rest, tarry, abide or make his Repose within this his Realm, or any of his Dominions, within Liberty and without, there and within the Verge limited and accustomed to his Grace's Court during the Time of his Abode, the Steward or Great Master of his Grace's Household, the Marshal, Coroner, Clerk of the Market, and all other his Ministers, shall and may keep their Courts for Justice, and exercise their Office and Offices, as shall appertain to them according to the Laws, Customs and Statutes of this Realm, as well within Liberties and Franchises as without: And that his Grace's Clerks of the Market, and none other, during the same Time, as well within the said Liberties and Franchises as without, shall exercise the Office of Clerks of the Market within the said Verge; any Privilege, Grant, Allowance or other Thing to the contrary thereof notwithstanding.

The Liberty of the City of London reserved.

VIII. Provided alway, That this Article next above rehearsed, or any Thing therein contained, be not in any wise prejudicial to the City of *London*, but that the same City shall have and use such Liberties as they might if that Article had never been had ne made.

'IX. And where also the Sites, Circuits and Precincts of the 'late Monasteries and Priories of *Cartemele, Coningsheved, Burscough* 'and *Holland*; and also divers Honours, Castles, Manors, Messuages, Lands, Tenements, Liberties, Privileges, Franchises and other Hereditaments, late parcel and appertaining to the said late Monasteries 'and Priories, or to any of them, which been comen into the King's 'Hands, been assigned, limited and appointed to the Order, Rule, 'Survey and Governance of the Chancellor, Officers and Ministers of 'the County Palatine and Duchy of *Lancaster*: And forasmuch as it 'is not fully, plainly nor expressly known or declared, how and in 'what wise, and by what special Officers and Ministers, the Liber- 'ties, Privileges, Franchises and temporal Jurisdictions, which the

'late Owners of the said Sites, Circuits, Precincts, Honours, Castles, 'Manors, Messuages, Lands, Tenements and other the Premisses 'had, used or exercised, should be ordered, used and put in 'Execution.' No. 15. 32 H. VIII. c. 20.

X. Be it therefore enacted by the Authority aforesaid, That all and singular the same Liberties, Franchises, Privileges and temporal Jurisdictions, which the said late Owners of the said Sites, Circuits, Precincts, Honours, Castles, Manors and other the Premisses, lawfully had, used and exercised by themselves, or by their Officers or Ministers, or which they might have used or exercised within three Months next before the same Sites, Circuits, Precincts, Honours, Castles, Manors and other the Premisses, came to the Possession of the King's Highness, shall be by Virtue of this Act revived, and be really and actually in the King's Highness, his Heirs and Successors, and shall be for ever in the Rule, Order, Survey and Governance of the said Chancellor, Officers and Ministers of the said County Palatine and Dutchy of *Lancaster*: And that the same Liberties, Franchises, Privileges and temporal Jurisdictions, and all manner of Fines, Issues, Amerciaments and other Profits and Commodities, of what Kinds or Nature soever they be, coming, growing or rising by reason or occasion of them, or any of them, shall be used, exercised and executed, to all Purposes, Intents, Conditions and Respects, and shall be claimed, levied, collected and taken by such Stewards, Bailiffs and other Officers and Ministers, as shall please the King's Highness to name and appoint for the same, in like Manner, Form and Condition, as they or any of them were used, exercised, executed, claimed, levied, collected and taken before they came to the Hands and Possession of our said Sovereign Lord: And that the said Stewards, Bailiffs, Officers and Ministers shall be compelled to accompt for the same before the said Chancellor, Officers and Ministers of the said County Palatine and Duchy of *Lancaster*, as other Officers and Accomptants in the Court of the said Duchy heretofore have done, or owe to do.

The Lands of certain late Monasteries of Friers, &c. shall be in the Government of the Officers of the Duchy.

XI. And be it enacted by the Authority aforesaid, That the said Stewards, Bailiffs and other Officers and Ministers, shall be attendant and obedient to all other the King's Courts, as well for all Executions and Returns of Writs, Warrants and Precepts, as for personal Appearances and other Duties of their Offices, like as the Officers and Ministers of the said late Owners did or ought to do, or should have done, by reason of their said several Offices, before that the same Liberties, Privileges and temporal Jurisdictions did come to the Possession of our said Sovereign Lord: and that to be done and observed, upon all Pains and Penalties by the Laws of this Realm limited and ordained for any Offence or Default in the same: And that no Sheriff, Under-sheriff or other Officer or Minister of any Sheriff or other foreign Officer or Minister, shall in any wise intromit or meddle in, with or upon any of the Premisses, otherwise or in any other Manner, or for any other Cause, than they or any of them might lawfully have done before the said Premisses did come to the Possession of our said Sovereign Lord.

The Stewards and Bailiffs of those Liberties shall be attendant on the King's Courts.

The Sheriff or other Officers shall not meddle within those Liberties.

XII. Provided always, That this Act, nor any Thing therein contained, shall in any wise extend to abrogate, adnul, diminish, nor to take away any Liberties, Franchises, Privileges, Jurisdictions, Royalties, or any other Profits, Commodities and Advantages whatsoever they be, belonging or in any wise appertaining to any the King's Castles, Honours, Manors, Lands, Tenements or other his Possessions of his said County Palatine of *Lancaster* and Duchy of *Lancaster*, or of either of them; but that all such Liberties, Franchises, Privileges, Jurisdictions, Royalties and all other such Profits, Commodities and Advantages whatsoever they be, shall be received,

This Statute shall not diminish the Liberties of any Lands being Parcel of the Duchy of Lancaster.

No. 15. 28 H. VIII. c. 20. taken and answered to the King's Highness, his Heirs and Successors, by the Chancellor, Officer and Ministers of the said County Palatine of *Lancaster* and Duchy of *Lancaster*, and either of them, as heretofore hath been used and done at any Time before the fourth Day of *February*, in the seven and twentieth Year of his most noble Reign; any Thing, Matter or Clause in this Act contained to the contrary hereof in any wise notwithstanding.

The Liberties of the Five Ports reserved. 1 M. Sess. 2, c. 10. 7 Ed. 6, c. 2. dissolving and new erecting of Courts.

XIII. Provided always, That this Act, or any Thing therein contained, do not extend to disannul or be hurtful to any of the Liberties or Privileges of the Cinque Ports, or the Members of the same; but that they and every of them shall enjoy, possess and have all and singular Liberties, Customs and Grants to them granted heretofore by the most famous Prince of Memory King EDWARD the Fourth, and other his noble Progenitors, confirmed by our Sovereign Lord the King's Majesty that now is, in like Manner and Form as though this Act had never been had ne made.

No. 16.

34 & 35 Henry VIII. c. 19.—An Act for the Payment of Pensions granted out of the late Abbies.

No. 17.

34 & 35 Henry VIII. c. 21.—An Act for the Confirmation of Lands obtained by the King's Majesty by Exchange or otherwise of his Grace's Subjects, or by his said Subjects of his Highness, notwithstanding the Misrecital either of Name, Place or Date.

No. 18.

1 Edward VI. c. 14.—The Act for Chantries Collegiate.

No. 19.

2 & 3 Edward VI. c. 8.—An Act for finding of Offices before Escheators.

2 & 3 Ed. VI. c. 8.

How Offices in some Cases shall be found before Escheators. 12 Car. 2, c. 24. Lessees for Years or Copyholders being put forth of Possession by the King, by the Common Law have no Remedy.

'WHERE many and divers Persons holding or that have holden 'Lands, Tenements, or Hereditaments, some for Term of 'Years, and some by Copy of Court-Roll, have been expulsed and 'put out of their Terms and Holds, by Reason of Inquisitions or 'Offices founden before Escheators, Commissioners and Other, containing Tenures of the King *in Capite*, intituling the King to the 'Wardship or Custody of such Lands or Tenements, and sometime 'intituling the King to the same upon Attainders of Treason, Felony 'or otherwise, by Reason that such Leases for Term of Years or 'Interest by Copy of Court-Roll of such Persons have not been found 'in such Inquisitions or Offices: After which Expulsion, or putting 'out, the said Persons have been without Remedy for the obtaining 'of the said *Fermes* and Holds, during the King's Possession therein; 'and can have no Traverse, *Monstrans de droit*, no other Remedy

No. 19.
2 & 3 Ed. VI. c. 8.

'for the same, because their said Interest is but a Chattel in the Law 'or a Customary Hold, and no Estate of Freehold

'II. And also where any Person or Persons hath any Rent, Common, Office, Fee or other Profit *apprendre*, of any Estate of Freehold or for Years, or otherwise, out of such Lands or Tenements 'specified in such Offices or Inquisitions, the said Rent, Common, 'Office, Fee or Profit *apprendre* not found in the same Office or 'Offices, such Persons are in like Manner without Remedy to obtain 'or have the said Rent, Common, Office, Fee or Profit *apprendre*, 'by any Traverse or other speedy Mean, without great and excessive 'Charges, during the King's Interest therein by Force of such Inquisition or Office.

The Interest of other shall be saved though they be not found by Office
Cro. El. 523.
Lee 35.
Vin. V. 10, 158.

III. For Remedy whereof, be it enacted by Authority of this present Parliament, That where any such Office or Inquisition is or shall be founden, omitting such Titles, Interests or Matters as is aforesaid, that in all such Cases every Lessee, Tenant of Years, or Copyholder, and every such Person or Persons that have or shall have any Interest to any Rent, Common or Profit *apprendre*, for Term of Years, Life or otherwise, out of any of the Lands, Tenements or Hereditaments contained in such Office or Inquisition, where the King, his Heirs or Successors is or shall be intituled, as is aforesaid to any such Lands, Tenements or Hereditaments, shall have, hold, enjoy and perceive all and every their Leases and Interests for Term of Years, or by Copy of Court-Roll, Rents, Commons, Offices, Fees and Profit *apprendre*, in such Manner, Form, State and Condition, as they and every of them should or might have done, in Case there had been no Office or Inquisition founden, and as they should or lawfully might or ought to have done in Case such Lease, Interest by Copy of Court-Roll, Rent, Common, Office, Fee or Profit *apprendre*, had been found in such Office or Inquisition; any Law, Custom or Usage to the contrary heretofore used in such Cases in any wise notwithstanding.

IV. And also where it is or shall be founden for the King, his Heirs or Successors, That the Heir or Heirs of his Tenant or Tenants is or shall be within Age, where indeed such Heir or Heirs is or shall be at the same Time of full Age, or of a more or greater Age than is or shall be contained within such Office.

A Remedy where an Heir of full Age shall be found within Age.

V Be it further enacted by the authority aforesaid, That in every such Case such Heir and Heirs shall and may at his or their very full Age, or After, prosecute a Writ *Ætate probanda*, and sue his or their Livery or *Ouster le main*, as his or their Cases shall lie, and have the Profits of his or their Lands, Tenements, or Hereditaments, from the Time of his or their full Age; any such untrue Office or Inquisition, or any Law or Custom to the contrary, in any wise notwithstanding

Hob. 50.
Dyer 161.
7 Co. 45.
Traverse to an untrue Office found after the Death of the King's Tenant, or upon Attainder of Treason, Felony &c.

VI. Also, where one Person or more is or shall be founden Heir to the King's Tenant by Office or Inquisition, where any other Person is or shall be Heir; or if one Person or more be or shall be founden Heir by Office or Inquisition in one County, and another Person or Persons is or shall be found Heir to the same Person in another County; or if any Person be or shall be untruly founden Lunatick, Idiot or Dead: Be it enacted by the Authority aforesaid, That every Person and Persons, grieved or to be grieved by any such Office or Inquisition, shall and may have his or their Traverse to the same immediately or after, at his or their Pleasure, and proceed to Trial therein, and have like Remedy and Advantage as in other Cases of Traverse upon untrue Inquisitions of Offices founden; any Law, Usage or Custom to the contrary in any wise notwithstanding.

No. 19.
2 & 3 Ed. VI. c. 8

A Traverse though the King be intituled by double Matter of Record.

VII. Also where it shall be hereafter untruly founden by Office or Inquisition, That any Person or Persons attainted or that shall be attainted of Treason, Felony, or *Præmunire*, is or shall be seised of any Lands, Tenements or Hereditaments, at the time of such Treason, Felony or Offence committed or done at any Time after, whereunto any other Person or Persons hath or shall have any just Title or Interest of any Estate of Freehold, that then in every such Case every Person and Persons grieved thereby shall have his or their Traverse or *Monstrance de droit* to the same, without being driven to any Petition of Right, and like Remedy and Restitution upon his or their Title found or judged for him or them therein, as hath been accustomed and used in other Cases of Traverse, although the King's Majesty, his Heirs or Successors, be or shall be in such Case intituled to any such Lands, Tenements or Hereditaments, by double Matter of Record; any Law, Custom or Usage to the contrary in any wise notwithstanding.

Traverse to an Office
13 H. 7. c. 11.
Bro. Office 59.
Dyer 155, 292, 306.
8 Co. 168.

VIII. And be it further enacted by the Authority aforesaid, That where any Inquisition or Office is or shall be founden by these Words or like, *Quod de quo* vel de quibus tenementa pred. tenent. Jurat. predict. ignorant*, or else founden holden of the King, *Per quæ servic. ignorant*, or such like that in such Case such Tenure so uncertainly founden, *De quo vel quibus tenementa predict tenentur ignorant*, shall not be taken for any immediate Tenure of the King, nor such Tenure so founden of the King, *Per quæ servic. ignorant*, shall not be taken any Tenure in *Capite*, but in such Cases, a *Melius inquirendum* to be awarded, as hath been the custom in old Time; any Usage of later Time to the contrary notwithstanding.*

Traverse to an Office where a wrong Tenure is found.
Dyer 161.
Cro. Jac. 186.

IX. And be it further enacted by the Authority aforesaid, That where it is or shall be founden by any Office or Inquisition, that any Lands, Tenements or Hereditaments are or shall be descended, remained or come unto any Heir within Age, and in the King's Ward, or that ought to be in the King's Ward, and that such Lands, Tenements or Hereditaments are holden of the King immediately, where indeed the same are or shall be holden of some other common Person, and not of the King immediately; That in such Case such Heir and Heirs shall and may have their Traverse to the same, within Age, and like Remedy and Restitution upon his or their Title found or judged for him or them therein, as hath been accustomed and used in other Cases of Traverses; any Law, Usage or Custom to the contrary in any wise notwithstanding.

'X. Also where the King's Majesty by his Prerogative ought to 'have, as well such Lands and Tenements as be holden of other 'Persons, as holden of himself immediately, whereof his Tenant 'holding of him in Chief dieth seised, his Heirs being within Age, 'until such Time as Livery be sued by such Heir, and that the 'mean Lords of whom the said other Lands and Tenements of such 'Heir be holden, used to spare the Rents due to them for the same 'Lands or Tenements holden of them during the King's Possession: 'And when such Heir hath sued his or their Livery, they use by 'Distress or otherwise to compel the said Heir to pay to them the 'Arrearages of such their Rents, for such Time as the said Lands 'and Tenements were in the King's Possession by such Minority, 'where they should have sued by Petition to the King's Majesty to 'have obtained the same out of the King's Hands, if they would 'have the same; which is to the great Detriment, Loss and Hindrance

* An Inquisition not finding of whom the Lands are holden, is in Substance the same as one finding the Ignorance expressly.—There is no Ground for confining the Statute to particular Inquisitions only.—Doe v. Redfearn, 12 E. 96. See Note to 8 Henry VI. c. 16, ante No. 7.

No. 10.
2 & 3 Ed. VI c. 8.

'of such Heir and Heirs:' For Redress whereof, be it enacted by the Authority of this present Parliament, That from henceforth such mean Lords during such Minority, shall have, receive and take their said Rents by the Hands of such the King's Officers as shall be appointed to have, receive and take the Issues, Revenues and Profits of the same Lands and Tenements so holden of such mean Lords, during the Minority and Nonage of such Heir and Heirs, and until such Heir and Heirs sue his or their Livery; and that such Heir and Heirs sue his or their Livery; and that such Heir and Heirs until such Time as he or they shall have sued their Livery, or might conveniently have sued their Livery, shall be thereof clearly discharged.

A Remedy for the Rents of the mean Lords where the King hath the Wardship.

XI And that such Office or Officers shall, upon Request made, pay the same to such mean Lords (they giving to such Officer and Officers a sufficient Acquittance or Acquittances for the Receipt of the same:) And that such Payment thereof made with Acquittance or Acquittances thereof shewed, shall be to such Officers a sufficient Discharge against the King's Majesty and his Heirs upon his or their Account in that Behalf; any Law, Usage or Custom heretofore had or used to the contrary hereof in any wise notwithstanding.

XII. Provided always, and be it enacted by the Authority aforesaid, That this Act or any Thing therein contained shall not in any wise extend to any Inquisition or Office taken or founden at any Time before the xx Day of *March* next coming, nor to hinder, prejudice or take away the Title, Interest or Profession of our Sovereign Lord the King, or of any other Person or Persons, grown or come by Vertue, Mean or Occasion of any Inquisition or Office taken or found before the same Day; but that as well our said Sovereign Lord the King, as all other Person and Persons having any Title, Interest or Possession, by Vertue, Mean or Occasion of any Inquisition or Office found before the same Day, shall and may have, hold and enjoy the same in like Manner and Form as though this Act had never been had or made; any Thing in the same Act to the contrary in any wise notwithstanding.

A Office found before the 20th Day of March 1548.

XIII. Provided also, and it is enacted by the Authority aforesaid, That in all such Cases as any Person or Persons shall be enabled by this Act to have any Traverse, and shall pursue his or their Traverse, that then he or they that shall pursue such Traverse shall sue one Writ or several Writs of *Scire facias*, as the Case shall require, against all and singular such Person and Persons as shall have Interest by the King or by his Patentee or Patentees, in like Manner and Form as is requisite upon Traverses or Petitions heretofore pursued: And that in every such *Scire facias* the Patentees or other Defendants shall have like Pleas and Advantage, as they had in any *Scire facias* before this Time awarded against any Patentee in any Case of Petition; and also upon Traverse that shall be pursued by Vertue or Mean of this Act, in such Case of Petition; and also upon every Traverse that shall be pursued by Vertue or Mean of this Act, in such Case as the Party or Parties that shall pursue any such Traverse should by the Order of the Common Laws of this Realm have been put to sue by Petition to the King, there shall be two Writs of Search granted, in Manner and Form as like Writs have been granted upon Petitions made to the King.

Upon a Traverse a Scire facias shall be awarded against the King's Patentees.

Two Writs of Search upon a Traverse.

XIV. Provided also, and it is enacted by the Authority aforesaid, That if after any Judgment shall be given upon any Traverse that shall be tendered or sued by Vertue or Mean of this Act, it shall appear by any Matter of Record, that the King hath any other former Title, Right or Interest to the Manors, Lands, Tenements or other Hereditaments mentioned in the same Traverse and Judgment thereupon given in any wise notwithstanding. Co. Lit. 213.

Notwithstanding a Traverse the King's former Right shall be reserved.
4 H. 7, f. 1 b.
14 Ed. 4, f. 5.
Dyer 248.
8 Co. 168

No. 20.

3 & 4 Edward VI. c. 4.—An Act concerning Grants and Gifts made by Patentees out of Letters Patents.

3 & 4 Ed. VI. c. 4. Explained by 13 El. c. 6. Grants made by Patentees out of Patents shall be good.

WHERE the right noble and famous King of full worthy Memory, King Henry the Eighth, Father to our most dread and now natural Sovereign Liege Lord, sithence the Fourth Day of *February* in the xxvij. Year of his late Reign, and also the King's most excellent Majesty, by their several Letters Patents, have given, granted, bargained, sold and exchanged, to and with divers and sundry the Subjects of this Realm, Bodies Politick and Corporate, in Fee-simple, Fee-tail, for Term of Life or Years, divers Honours, Castles, Manors, Lands, Tenements and other Hereditaments and and Offices; after and since which Grants, Bargains, Sales, and Exchanges, divers of the said Patentees their Heirs, Successors or or Assigns, have Bargained, Sold, Given, Exchanged or Demised divers particular Parts, Parcels or Portions of the said Honours, Castles, Manors, Lands, Tenements, Hereditaments and Offices, or other Things thereunto appertaining or belonging, to other Person or Persons, Bodies Politick and Corporate; that is to say, to some of them in Fee-simple, to some others in Fee-tail, for Term of Life or Years, or otherwise; and after the same Patentees, for Considerations them moving, have surrendered and given up their said Letters Patents into the Chancery, or otherwise the same Letters Patents have been forfeited by Attainder, lost, cancelled, imbesled, or by other Ways or Means have come to the Hands of the King's Majesty his late Father; And thereupon oft-times the Enrollment of the same hath been made void and frustrate, sometime in Part, and sometime in the Whole by Reason whereof such Persons, Bodies Politick or Corporate, as have had Interest or Title in or to the same Castles, Manors, or particular Portions or Parcels of the same so to them given and granted, have been in Time past, and in Time to come are like to be, disherited, or in Danger of Loss of their Interest in or to the same, to their no little Hindrance and Peril.'

3 Leon. 165. An Exemplification of the King's Letters under the Great Seal shall be of as good Force as if the same Letters Patents were shewed. 5 Co. 53. Dyer 167, 179. Br. Surrender 51. Co. Lit. 225, b.

II. For Remedy whereof be it ordained, established, and enacted by the Authority of this present Parliament, That all and every Person or Persons, Bodies Politick or Corporate, which lawfully shall or may claim by Force of any Patent or Patents made sithence the said Fourth Day of *February*, or hereafter to be made by the King's Majesty, his Heirs or Successors, King's of this Realm, or by any of them; and all other that now have or hereafter shall happen to have any good or lawful Estate, Right, Title, Rent, Profit, Interest or Possession, of, in, to, or out of any Honours, Manors, Lands, Tenements, Hereditaments or Offices, or of other Things to any of these Premisses appertaining or belonging, or to any Part, Parcel or Member of them, or any of them, by, from or under any such Patentee or Patentees, or any of them, or by, from or under the Heirs, Successor or Assigns of them or any of them, or by, from or under the Estate of any others which had, have or hereafter shall have the Estate, Title or Interest of any such Patentee or Patentees, or by any other Means under the Date of such Letters Patents, shall and may at all Times hereafter in any of the King's Courts, his Heirs or Successors, and elsewhere, by Virtue of this present Act, make and convey unto himself Title by Way of Declaration, Plaint, Avowry, Title, Bar or otherwise, as well against the King's Highness, his Heirs and Successors, and every of them, as against any other Person or Persons, unto the said Honours, Castles, Manors, Lands, Tene-

ments, Offices, and other Premises, or any Part or Parcel of the same, unto them or any their Predecessors or Ancestors, or others whose Estate they have in the same, by, from or under the said Patentees or any of them, or the Heirs, Ancestors or Assigns of any of them, or otherwise under the Date of the said Letters Patents comprised and contained in any Exemplification or *Constat* thereof made or to be made, by the shewing forth of the said Exemplification or *Constat* of the Roll, or of so much thereof as shall serve for the Matter in Variance, under the Great Seal of *England*: And the said Exemplification or *Constat* of the said Enrollment so as is aforesaid pleaded and shewed, shall be of like and the same Force and Effect, to all Intents and Constructions in the Law, as the said first Letters Patents were and should be of, if the same were or should be pleaded or shewed. No. 20. 3 & 4 Ed. VI. c. 4.

No. 21.

13 Elizabeth, c. 6.—An Act that the Exemplification or *Constat* of Letters Patents shall be as good and available as the Letters Patents themselves.

FOR the avoiding of all such Doubts, Questions and Ambiguities, as heretofore have risen and been moved, and of such as hereafter might rise and be moved, in and upon the Statute made in the Parliament begun and holden at *Westminster* the fourth Day of *November* in the third Year of the Reign of our late Sovereign Lord King Edward the Sixth, intituled, *An Act concerning Grants and Gifts made by Patentees out of Letters Patents, and for a due and full Supply of all such Wants as may be thought to be therein*: 13 Eliz. c. 6. A Supply of the Statute of 3 & 4 Ed. 6, c. 4.

II. Be it enacted and declared by the Authority of this present Parliament, That all and every Patentee and Patentees, their Heirs, Successors, Executors and Assigns, and all and every other Person and Persons, having by or from them, or any of them, or under their Title, any Estate or Interest of, in or to any Lands, Tenements or Hereditaments, or any other Thing whatsoever, to such Patentee or Patentees heretofore granted by any Letters Patents, either of the most famous Princes, King Henry the Eighth, King Edward the Sixth, Queen Mary, King Philip and Queen Mary, or by any of them, or by the Queen's most Excellent Majesty that now is, at any Time sithence the fourth Day of *February* in the twenty-seventh Year of the Reign of the said late King Henry the Eighth, or else by the Queen's Majesty that now is, her Heirs or Successors, at any Time hereafter to be granted, shall and may at all Times hereafter in any of the Queen's Highness Courts, her Heirs and Successors, or elsewhere, by the Authority of this present Act, make and convey, and be allowed and suffered to make and convey, to and for him, them and every of themselves, such Claim or Title by way of Declaration, Plaint, Avowry, Bar, Replication, or other Pleading whatsoever, as well against the Queen's Highness, her Heirs and Successors, and every of them, as against all and every other Person and Persons whatsoever, for or concerning the Lands, Tenements, Hereditaments, or other Things whatsoever, specified or contained in any such Letters Patents, or of, for or concerning any Part or Parcel thereof, by shewing forth an Exemplification or *Constat* under the Great Seal of *England* of Enrollment of the same Letters Patents, or of so much thereof as shall and may serve to or for such Title, Claim or Matter, the same Letters Patents then being and remaining in Force, not An Exemplification of Letters Patents shall be of the same Force as the Letters Patents themselves. 5 Co. 53. Co. Lit. 225, b.

No. 21.
13 Eliz. c. 6.

lawfully surrendered nor cancelled, for or concerning so much and such Part and Parcel of such Lands, Tenements, Hereditaments, or other Thing whereunto such Title or Claim shall be made, as if the same Letters Patents self were pleaded and shewed forth; any Law, Usage, or other Thing whatsoever to the contrary notwithstanding. Coke, pla. 541.

No. 22.

21 James I. c. 2.—An Act for the general Quiet of the Subjects against all Pretences of Concealment whatsoever.

21 Jac. 1 c. 2.
Concealed Lands shall not be recovered, unless it may be proved that the King had Title unto them within Sixty Years before this Parliament.
3 Inst. 188.

THE King's most Excellent Majesty, of the blessed and gracious Disposition, and abundant Grace, desiring that his loving Subjects, their Heirs and Successors, may quietly have and hold all and singular Manors, Lands, and Tenements and Hereditaments, which they, their Anceators or Predecessors, or any other by, from, or under whom they claim, have of long Time enjoyed, is graciously pleased that it be enacted; And be it enacted by the King's most Excellent Majesty, by and with the Assent and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That the King's Majesty, his Heirs and Successors, shall not at any Time hereafter sue, impeach, question, or implead any Person or Persons, Bodies Politick or Corporate, for or in any wise concerning any Manors, Lands, Tenements, Rents, Tythes, or Hereditaments, other than Liberties and Franchises, or for or in any wise concerning the Revenues, Issues, or Profits, thereof, or make any Title, Claim, Challenge, or Demand, of, in, or to the same, or any of them, by reason of any Right or Title accrued and grown Threescore Years past and more, and now *in esse*, unless his Majesty, or some of his Progenitors, Predecessors, or Ancestors, or some other Person or Persons, Bodies Politick or Corporate, under whom his Majesty any Thing hath or lawfully claimeth, have been answered by Force and Virtue of any such Right or Title to the same, the Rents, Revenues, Issues, or Profits thereof, within Threescore Years next before the Beginning of this present Session of Parliament or that the same have been duly in Charge to his Majesty, or the late Queen *Elizabeth*, or have stood *insuper* of Record within the said Space of Threescore Years: And that every Person or Persons, Bodies Politick or Corporate, their Heirs and Successors, and all claiming by, from, or under them, or any of them, for and according to their and every of their several Estates and Interests, which they have or claim to have in the same respectively, shall hereafter quietly and freely have, hold, and enjoy, against his Majesty, his Heirs and Successors, claiming by any Title accrued or grown Threescore Years past or above, and now *in esse*, all and singular Manors, Lands, Tenements, Rents, Tythes, and Hereditaments whatsoever, except Liberties and Franchises, which he or they, or his or their, or any of their Ancestors or Predecessors, or those from, by, or under whom they claim, have held or enjoyed, or taken the Rents, Revenues, Issues, or Profits thereof, by the Space of Threescore Years next before the Beginning of this present Session of Parliament, unless his Majesty, or some of his Progenitors, Predecessors, or Ancestors, or some other Person or Persons, Bodies Politick or Corporate, by, from, or under whom his Majesty any Thing hath or lawfully claimeth in the said Manors, Lands, Tenements, Rents, Tythes, or Here-

ditaments, by force of any Right or Title, have been answered by Virtue of any such Right or Title, the Rents, Revenues, Issues, or other Profits thereof, within Threescore Years next before the Beginning of this present Session of Parliament, or that the same have been duly in Charge, or stood *insuper* of Record as aforesaid, within the said Space of Threescore Years. And furthermore, that every Person and Persons, Bodies Politick and Coporate, their Heirs and Successors, and all claiming by, from or under them, or any of them, for and according to their and every of their several Estates and Interests which they have or claim respectively, shall quietly and freely have, hold, and enjoy all such Manors, Lands, Tenements, Rents, Tythes, and Hereditaments, except Liberties and Franchises, as they now have, claim, or enjoy, (whereof his Majesty, his Progenitors, Predecessors, or Ancestors, or he or they by, from, or under whom his Majesty any Thing hath or lawfully claimeth, or some of them, by force of some Right or Title to the same, have not been answered by Virtue of such Right or Title, the Rents, Revenues, Issues, or Profits thereof, within Threescore Years next before the Beginning of the present Session of Parliament:) Nor the same have been duly in Charge, or stood *insuper* of Record as aforesaid, within the said Space of Threescore Years, against all and every Person and Persons, their Heirs and Assigns, having, claiming, or pretending to have any Estate, Right, Title, Interest, Claim, or Demand whatsoever, of, in, or to the same, by Force or Colour of any Letters Patents, or Grants upon Suggestion of Concealment, or wrongful detaining, or not being in Charge, or defective Titles, or by, from, or under any Patentees or Grantees, or any Letters Patents, or Grants upon Suggestion of Concealment, or wrongful detaining, or not being in Charge, or defective Titles, of or for which said Manors, Lands, Tenements, Rents, Tythes, and Hereditaments, or any of them, no Verdict, Judgment, Decree, judicial Order upon Hearing, or Sentence now standing in Force, hath been had or given in any Action, Bill, Plaint, or Information, in any of his Majesty's Courts at *Westminster*, for or in the Name of the King's Majesty, or of the late Queen ELIZABETH, or for any of the said Patentees or Grantees, or for their or any of their Heirs or Assigns, within Threescore Years next before the Beginning of this present Session of Parliament.

No. 22.
21 Jac. I. c. 2.

II. Provided always, That this Act, or any thing therein contained, shall not extend to bar, impeach, or hinder his Majesty, his Heirs, or Successors, of, for, or from any Manors, Lands, Tenements, Rents, Tithes, or Hereditaments, whereof any Reversion or Remainder now is in his Majesty, for or concerning the said Reversion or Remainder; nor of, for, or from any Reversion or Remainder, or Possibility of Reversion or Remainder, in any of his Majesty's Progenitors, or Predecessors, or Ancestors, which by the Expiration, End, or other Determination of any limited Estate of Fee-simple, or of any Fee-tail or other particular Estate, hath or ought to have fallen or become in Possession within the Space of Three Years next before the Beginning of this present Session of Parliament: Nor of, for, or from any Right or Title first accrued or grown to his Majesty, or any of his Progenitors, Predecessors, or Ancestors, of, in, or to any Manors, Lands, Tenements, Rents, Tithes, or Hereditaments, within the Space of Threescore Years next before the Beginning of this present Session of Parliament, and not before.

This Act shall not impeach the King's Title to any Reversion or Remainder.

III. Provided also, and be it enacted by Authority of this present Parliament, That this Act, or any Thing therein contained, shall not extend to any Manors, Lands, Tenements, Rents, Tithes, or Hereditaments mentioned to be granted or conveyed by any of his Majesty's Progenitors, Predecessors or Ancestors, or by any other under whom

No. 22. 21 Jac. I. c. 2.

his Majesty claimeth, to any Person or Persons, of any limited Estate in Fee-simple, or of any Estate in Tail, or other particular Estate, which several Estates (if the same had been good and effectual Law) have or ought to have fallen or become in Possession within Threescore Years next before the Beginning of this present Session of Parliament, nor to any Manors, Lands, Tenements, Rents, Tithes, or Hereditaments, mentioned to be granted or conveyed by any of his Majesty's Progenitors, Predecessors, or Ancestors, or by any other under whom his Majesty claimeth, to any Person or Persons, in Fee-tail, or other particular Estate, whereof the Reversion of Inheritance (if such Estate-tail, or other particular Estate had been good and effectual in Law) should have been and continued in his Majesty, the First Day of this present Session of Parliament.

This Act shall not extend to alter the Tenures or Services of Lands.

IV. Provided also, and be it enacted by the Authority of this present Parliament, That all and singular the said Manors, Lands, Tenements, and Hereditaments, shall be holden of his Majesty, his Heirs and Successors, and of other Person or Persons, Bodies Politick and Corporate, their Heirs and Successors respectively, by the same Tenures, Services, Fee-farms, Chief-rents, Herriots, and other Duties, to all Intents and Purposes, as the same should or ought of Right to have been holden, if the Estates, Rights, and Interests established and made sure by this present Act had been before the making of this Act, firm, good, and effectual in Law: Saving to every Person and Persons, Bodies Politick and Corporate, their Heirs and Successors, (other than his most Excellent Majesty, his Heirs and Successors, and other than all Patentees or Grantees of Concealments or defective Titles, and all and every Person or Persons claiming from, by, or under them or any of them, for, in respect, or by Reason of any such Patents or Grants of Concealments or defective Titles) all such Rights, Title, Interest, Estate, Rents, Commons, Customs, Duties, Profits, and other Claims and Demands whatsoever, in, to, or out of the said Manors, Lands, Tenements, Tithes, or Hereditaments, as they or any of them had or ought to have had before the making of this Act; any Thing in this Act to the contrary notwithstanding.

The Right of others saved. 1 Mod. 279.

It shall not extend to annul the Custom of Two-pence paid for Sea-Coal at Newcastle.

V. Provided always, That this Act, nor any Thing therein contained, shall extend to debar to his Majesty, his Heirs or Successors, of or from such Claim and Demand as his Majesty hath made, or may rightfully make, unto a certain Duty or Custom of Two-pence upon a Chaldron of Sea-coal to be paid in the Port of the Town of *Newcastle-upon-Tyne*, with the Members thereof, but that the same shall be and remain in such Sort and Degree as if this Act, had never been had or made.

All Rents answered within 60 years confirmed.

VI. Provided also, and be it enacted, That where any Fee-farm Rent, or other Rents, have been answered and paid to the King's Majesty, or to any his Predecessors, by the more Part of Threescore Years last past, out of any Manors, Lands, Tenements, or Hereditaments, of which Manors, Lands, Tenements, or Hereditaments, the Estates, Rights, or Interests being defective, are established and made sure by this present Act; that the King's Majesty, his Heirs and Successors, shall from henceforth for ever have, hold, and enjoy the said Rents and Arrearages thereof, in such Manner and Form, and as fully and amply, as the same were enjoyed by the more Part of Threescore Years last past before the Beginning of this Session of Parliament.

The King's Title required by this Act to be within Sixty Years, ought to accrue upon a Verdict or Demurrer, &c.

VII Provided always, and be it enacted by the Authority of this present Parliament, That no putting in Charge, nor standing *insuper* nor taking or answering the Farm-rents, Revenues, or Profits of any of the said Lands, Tenements, or Hereditaments, by Force, Colour, or Pretext of any Letters Patents, or Grants of Concealments, or defective Titles, or of Lands, Tenements, or Hereditaments, out of Charge, or

No. 22
21 Jac. I. c. 2.

by Force, Colour, or Pretext of any Inquisitions, Presentments, by or by Reason of any Commission, or other Authority to find out Concealments, defective Titles, or Lands, Tenements, or Hereditaments out of Charge, shall be deemed, construed, or taken to be a putting in Charge, standing *insuper*, or taking or answering the Farm-rents, Revenues, or Profits, by or to his Majesty, or any of his Progenitors or Predecessors, unless thereupon such Lands, Tenements, or Hereditaments, have been upon any Information or Suits, on the Behalf of his Majesty, or any his Progenitors or Predecessors, upon a lawful Verdict given, or Demurrer in Law adjudged, or upon a Hearing ordered or decreed for his Majesty, or any of his Progenitors or Predecessors, or of any of them within the said Space of Threescore Years.

and not upon a bare putting in Charge or standing insuper.

VIII. Provided always, and be it enacted, That this Act, or any Thing therein contained, shall not extend, or be prejudicial to his Majesty, for or concerning any Manors, Lands, Tenements, or Hereditaments, for which any Composition is, or before the End of this Session of Parliament, shall be made with his Majesty's Commissioners for defective Titles, and the Monies by such Compositions payable to his Majesty not paid before the End of this Session of Parliament, unless the said Monies shall be paid, and his Majesty's Letters Patents procured according to the true Intent of such Compositions, within Three Months after the End of this Session of Parliament.

This Act shall not extend to Land for which Composition is or shall be made before End of the Session.

No. 23.

21 James I. c. 14.—An Act to admit the Subject to plead the General Issue in Informations of Intrusions brought on the Behalf of the King's Majesty, and retain his Possession till Trial.

21 Jac. I. c. 14
In Informations of Intrusion, the Subject is allowed to plead the General Issue, and to retain Possession till Trial.
4 Inst. 116.
Dyer 238.

'WHERE the King out of his Prerogative Royal may enforce 'the Subject in Informations of Intrusion brought against him, 'to a special pleading of his Title;' The King's most Excellent Majesty, out of his gracious Disposition towards his loving Subjects, and at their humble Suit, being willing to remit a Part of his ancient and regal Power, is well pleased that it be enacted; and be it enacted by the King's most Excellent Majesty, the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That whensoever the King, his Heirs or Successors, and such from or under whom the King claimeth, and all others claiming under the same Title under which the King claimeth, hath been or shall be out of Possession by the Space of Twenty Years, or hath not or shall not have taken the Profits of any Lands, Tenements, or Hereditaments, within the Space of Twenty Years before any Information of Intrusion brought or to be brought, to recover the same; that in every such Case the Defendant or Defendants may plead the General Issue, if he or they so think fit, and shall not be pressed to plead specially; and that in such Cases the Defendant or Defendants shall retain the Possession he or they had at the Time of such Information exhibited, until the Title be tried, found, or adjudged for the King.

II. And be it further enacted, That where an Information of Intrusion may fitly and aptly be brought on the King's Behalf, that no *Scire facias* shall be brought, whereunto the Subject shall be forced to a special Pleading, and be deprived of the Grace intended by this Act. 17 Ed. 2, Stat. 1, c. 13.

No. 24.

21 James I. c. 25.—An Act for the Relief of Patentees, Tenants, and Farmers of Crown Lands and Duchy Lands, or of Lands within the Survey of the Court of Wards and Liveries, in Cases of Forfeiture for not Payment of their Rents, or other Service or Duty.

21 Jac. I. c. 25.

'FORASMUCH as the King's Majesty, out of his gracious Disposition, is and ever hath been averse from taking any Advantage, howsoever lawful and just, against any of his Subjects, growing by any Forfeiture, Breach of Condition, or strict Interpretation of his Highness Grants or Letters Patents, or the Grants or Letters Patents of any of his Royal Predecessors, of any Manors, Lands, Tenements, or Hereditaments; and yet the Grantees or Patentees deriving their Estates by or from his Majesty, or his Predecessors, have been too apt and ready to exact the Advantage of such Forfeiture, where his Majesty himself or his Predecessors have not required the same, which hath been ever held an unequal and extreme Course, and hath many Times been relieved by Suits in Courts of Equity, though with the great Charge and Trouble of the Parties endangered thereby:'

No Advantage shall be taken against the King's Patentees or Tenants for Nonpayment of Rent, &c.

II. For Remedy whereof, as well where the King as any of his Predecessors or Successors hath granted or shall grant the said Manors, Lands, Tenements, or Hereditaments, or any Part thereof, or the Reversion or any Part thereof, to any other, as where the Reversion, Remainder, or Estate thereof, is or shall be in the King's Majesty, or his Successors, in the Right of the Crown of *England*, or Duchy of *Lancaster*, or otherwise, his Majesty of his abundant Grace towards his loving Subjects is graciously pleased that it be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Assent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That if any Person or Persons, Bodies Politick or Corporate, having, holding, or possessing, or which hereafter shall have, hold, or possess, any Manors, Lands, Tenements, or Hereditaments, by Virtue or Colour of any original Grant or Lease, or Assignment of the same, made by the King's Majesty, or any of his Predecessors, or to be made by any of his Successors, for any Number of Years, for Life or Lives, in Fee-tail or Fee-simple, or other Estate, whereupon any Rent, Service or other Duty hath been, is or shall be reserved or payable with or under any Condition or Limitation of Re-entry, Cesser, or to be void for Default of Payment of such Rent, or Performance of such Service, or Duty, heretofore hath made, or any other by, from or under whom he claimeth, hath made, or any which hereafter shall have, hold, or possess, shall make any Default therein, and yet after such Default made, such Rent, Service, or other Duty hath been or shall be answered, paid, or done unto his Majesty, or any of his Predecessors or Successors, into his or their Receipt of the Exchequer, or Duchy of *Lancaster*, or Court of Wards, or to any other having Authority to receive the same, as the Case shall require, before any Advantage of such Forfeiture hath been or shall be taken, and before any Commission awarded to enquire, or other Process issued touching the said Forfeiture or Non-payment of Rent, that in all Cases no Advantage shall be taken by his Majesty, his Heirs or Successors, of, for or by reason of any such Forfeiture or Cause of Forfeiture.

III. And be it further enacted, That no Person or Persons claiming, or which afterwards shall claim, by, from, or under his Majesty, or any of his Predecessors or Successors, at any Time after such Cause or Title of Forfeiture given, shall in any wise have or take any Benefit or Advantage, by Reason, Means, or Colour of such Default made or to be made; but that every such Estate forfeited or forfeitable by Means or Occasion of such Default of Payment of Rent, or Performance of Service or other Duty, shall be adjudged to continue and have its Being, as if no such Default or Cause of Forfeiture had been had or made; any Law, Custom, or Usage, to the contrary thereof in any wise notwithstanding. No. 24. 21 Jac. I. c.

No. 25.

22 Charles II. c. 6.—An Act for advancing the Sale of Fee-farm Rents, and other Rents.

'WHEREAS his Majesty is seised of several Fee-farm Rents, and 'other Rents in Right of his Crown, some whereof are Parcel 'of his Highness Duchy of *Cornwall*, and is also seised of several Fee-'farm Rents, and other Rents in Right of his Highness Duchy of '*Lancaster*: 22 Car. II. c. 6

'II. And whereas it is convenient that some special Privileges and 'Advantages should be granted unto the Purchasers, which cannot 'well be transferred unto them without Authority of Parliament; and 'whereas the better to enable his Majesty to pay such Debts owing 'at Interest, whereof his Majesty shall find Reason to hasten the Dis-'charge, his Majesty is minded to grant and convey to certain Persons, 'and their Heirs and Assigns for ever, as Trustees for Sale thereof, 'divers Fee-farm Rents, Rents Service, Rents Seck, or Dry Rents, 'Rents reserved, Guild Rents, Pensions, Viconticl Rents, Assart 'Rents, Rents for Purprestures arented, Rents certain, or divers other 'Rents of what Nature or Kind soever they be, due and payable to his 'Majesty, his Heirs and Successors, as his Majesty shall think fit to 'mention and express in the said Letters Patent, whether the same be 'due to his Majesty in Right of his Crown of *England*, or in Right 'of his Duchy of *Lancaster*, or be Parcel of, or annexed unto the 'Duchy of *Cornwall*; except and always reserved and foreprized out 'of such Letters Patents, all Quit Rents and Copy-hold Rents stand-'ing in Charge as Parcel of or belonging to any Manor or reputed Ma-'nor; and also all Tenths and First Fruits, and Rents reserved *nomine* '*Decimæ*, due and payable by any Archbishop, Bishop, Dean, Dean 'and Chapter, Archdeacon, Prebendary, Parson, Vicar, or any other 'Spiritual or Ecclesiastical Corporation; 22 & 23 Car. II. c. 24. Fee-farm Rents, Rent Service, Chauntry Rents, &c. Except Quit Rents, Copyhold Rents, Tenths, First Fruits &c.

'III. And also all Rents reserved upon any Leases or Estates where-'of the Reversion is now in his Majesty, and which are incident to 'such Reversion; and also all Rents reserved upon any Lease or Farm 'made or granted, or to be made or granted, of his Majesty's Customs 'or Excise; and also except all Rents or Sums of Money due and 'payable to his Majesty, his Heirs and Successors, for or in respect of 'any Fire Hearths or Stoves:'

IV. Be it therefore enacted by the King's most Excellent Majesty, with the Advice and Assent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by Authority of the same, That all and every Letters Patents to be granted by his Majesty before the Four and Twentieth Day of *June*, in the Year of our Lord One thousand six hundred and seventy-two, under his Great Letters Patent granted by the King, of certain Rents before the 24th of June, 1672, confirmed.

No. 25. 22 Car. II. c. 6

Seal, or under the Seal of his Duchy of *Lancaster*, or under the Seal of the County Palatine of *Lancaster*, of all or any of the Rents aforesaid (except before excepted), shall be, and are hereby declared and enacted to be good, sufficient and effectual in the Law, for the granting and assuring the several Rents aforesaid, or any of them (except before excepted), and for vesting the same in such Persons and their Heirs, as shall be therein nominated as Trustees for the Sale thereof, against his Majesty, his Heirs and Successors, and against the Dukes of *Cornwall* for the Time being, and against all Person and Persons that shall have or inherit, or enjoy the Dukedom of *Cornwall* by Force of any Act of Parliament, or other Limitation whatsoever, according to the Tenor and Effect of the said Letters Patents; and the same shall be expounded, construed, deemed, and adjudged most beneficially for the Patentees and Grantees of the same, and their Heirs, Successors, Executors, Administrators and Assigns, according to the Words and Purport of the said Letters Patents without any Confirmation, Licence, or Toleration of his Majesty, his Heirs or Successors; any Misnaming, Mis-recital, or Non-recital of any the Honours, Manors, Castles, Lands, Tenements, or Hereditaments, subject and liable to, or charged with the Payment of such Rents, or any Mis-recital or Non-recital of any Estate-tail formerly made, or of the Reversion thereupon expectant, or any Mis-naming, or not true naming of Towns, Hamlets, Parishes, or Counties where the same Honours, Manors, Lands, Tenements, or Hereditaments, charged or chargeable with the said Rents do lie, or any Lack of the true naming of the Corporation, or any Lack of Attornment, or any Mis-naming, or not naming of any of the Tenants or Farmers of the Lands charged or chargeable with such Rents, or any Part thereof, to the contrary notwithstanding;

V. And notwithstanding any other Defect or Imperfection which shall happen therein, of what Nature or Kind soever it shall be. And the said Rents so to be granted, shall be afterwards conveyed and disposed by the said Patentees and Trustees, according to the Directions and Instructions herein-after mentioned.

The Patentees and Trustees may sell the same Rents to any Purchaser, by Indenture of Bargain and Sale inrolled

Such Rents, how to be described in Deeds and Pleadings

10 Ann. c. 18, sect. 21.

VI. And be it further enacted by the Authority aforesaid, That the said Patentees and Trustees, and the Survivor and Survivors of them, shall make and execute to all and every Person or Persons, Bodies Politick and Corporate, their Heirs, Successors and Assigns, who shall become Purchaser or Purchasers of the said Rents, or of any Part thereof, an Indenture or Indentures of Bargain and Sale which shall be inrolled in any of the Four Courts at *Westminster*, within Six Months after the Date thereof, and shall contain a Conveyance and Assurance of the Rents so purchased and transfer the same by Words of Bargain and Sale, or by Words of Grant, Release, or Confirmation, or by such other apt Words and Clauses as by the said Purchaser or Purchasers, their Heirs, Successors or Assigns, shall be reasonably devised or required, and shall be thought most suitable and convenient to and for the several Cases and Titles of such Purchaser or Purchasers respectively; and such Conveyance or Assurance shall also recite the Consideration in Money paid or given, and thereof and of every Part or Parcel thereof shall exonerate, acquit, and discharge the said Purchaser or Purchasers, his and their Heirs, Successors, Executors and Assigns.

Purchasers by Virtue of such Deed peaceably to enjoy against all Claims

VII. And be it further declared and enacted by the Authority aforesaid, That all and every Person and Persons, Bodies Politick and Corporate, his and their Heirs, Successors and Assigns, having and taking any such Conveyance and Assurance as aforesaid, and causing the same to be inrolled as aforesaid within the Space of Six Months next after the Date thereof, shall be and is hereby adjudged in actual Seisin and Possession of the Rents so purchased and conveyed; and

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22 Car. II. c. 6.

shall hold and enjoy the same in perfect Peace, freed and discharged of and from all Claims and Demands which can or may be made by his Majesty, his Heirs or Successors, either in Right of his Crown, or any the Duchies aforesaid, or otherwise howsoever, or by any Dukes of *Cornwall* for the Time being, or by any Person or Persons that shall have, inherit, or enjoy the Dukedom of *Cornwall*, by Force of an Act of Parliament, or other Limitation whatsoever, and also freed and discharged of and from any Breach of Trust which can or may be pretended to be committed by the said Trustees, in not strictly pursuing the Powers given by this Act, or the Instructions hereinafter mentioned, or any other Instructions whatsoever, or the Orders to them directed at the Time of the making and executing such Conveyance; and shall also hold and enjoy all and every the Rents so purchased, as fully, freely, and amply, as his Majesty at the Time of the passing of this Act did or might have held or enjoyed the same.

And to sell and recover the same as his Majesty might have done.

VIII. And be it further enacted, That all and every Person and Persons, Bodies Politick and Corporate, who shall purchase any of the said Rents, and their and every of their Heirs, Successors, and Assigns, respectively, shall be and are hereby enabled to have, sue for, and recover the same, by such and the like lawful Ways and Means, as his Majesty, or any of his Royal Progenitors, could or might have recovered the same, be it by distraining in all or any of the Lands of the Tenant or Tenants for the Time being, that shall hold any Lands charged with the said Rent, or by having Power to detain or sell all such Distresses after the Space of Fifteen Days after such Distress taken, in case the said Rent shall not be then or before paid, returning the Overplus of what shall be so sold, to the Party distrained; or by having the full Benefit and Advantage of all Sums of Money reserved *nomine Pœnæ*, or as a Penalty for Nonpayment of the said Rent, or by using the like Action or Suit as his Majesty might have used for the Recovery of the same before such Patent granted, so as the same extend not to any such Process of Extent, or other Prerogative Process out of the Court of Exchequer, as his Majesty might have had before such Patent granted. ' And forasmuch as upon divers Commissions of defective Titles, Inquisitions, or Suggestions of Concealment, divers Patents have formerly passed the Great Seal of *England*, or under the Seal of the Duchy of *Lancaster*, or under the Seal of the County Palatine of *Lancaster*, of divers Manors, Lands, Tenements, and Hereditaments, whereupon divers Fee-farm Rents or other Rents have been reserved, and sometimes put in Charge, where in Truth nothing hath passed by the said Letters Patents, nor have the Manors, Lands, and Tenements, Liberties or Hereditaments mentioned to have been granted, been enjoyed or held under the said Letters Patents, but under other Titles, or by virtue of other Letters Patents whereupon other Rents are reserved;'

Fee-farm and other Rents not paid for 10 Years last past, not to be inserted in the Patents.

IX. Be it therefore enacted, That such Fee-farm, or other Rents, which have not been usually paid by the Owners or Occupiers of the Manors, Lands, or Tenements, charged, or mentioned to be charged therewith by the greater Space of Forty Years now last past, shall not be inserted or mentioned in any such Letters Patents to be hereafter granted to Trustees as aforesaid: And further, That where any Person or Persons, Bodies Politick or Corporate, have held any Manors, Lands, Tenements, or Hereditaments subject to the Payment of any Fee-farm Rent, or other Rent which hath been usually paid or answered by the Owners by Occupier of such Lands so charged: and that by Colour or Pretence of some Patent of Concealment, or by Pretence of Commissions for defective Titles passed of the same Lands, some other or greater Rent hath been reserved or put in Charge, but the

No. 25. 22 Car. II. c. 6.

same hath not been usually answered or paid by the Owners or Occupiers of the said Lands by the greater Space of Forty Years before mentioned; that then and in such Case the Tenant of the Lands shall hold the same discharged of the said Rent so reserved by Virtue of the said Patent of Concealment, or by Commission of defective Titles, and also discharged of all Seizures and Distresses for the same, until the same shall have been recovered by due Course and Proceedings of Law.

Letters Patents of Manors, Lands, &c. heretofore granted

And if any Letters Patents of any Manors, Lands, Tenements, or Hereditaments, have been heretofore granted, whereupon any Fee-farm Rents, or other Rents have been reserved, which at any Time after the passing of this Act, shall be sold to any Purchaser or Purchasers, if such Letters Patents whereupon such Rents so sold have been reserved, shall at any time be hereafter be adnulled, defeated, repealed, cancelled, avoided, or otherwise determined, whereby the Lands shall return to his Majesty, his Heirs or Successors; then and in every such Case, all and every the Purchaser and Purchasers of such Rents, their Heirs, Successors, and Assigns, shall have and receive out of the same Lands, Tenements, and Hereditaments, the like Rent, and for the like Estate therein, with that which was by them so purchased, and shall enjoy such-like Rent during such Estate against his Majesty, his Heirs and Successors, and against all Persons, Bodies Politick and Corporate, claiming by, from or under his Majesty, his Heirs, and Successors, by any Grant or Conveyance made or granted by his Majesty, his Heirs and Successors, subsequent to such Purchase made; and shall have like Remedy for Recovery thereof, (any such Adnulling, Defeating, Repeal, Cancelling, Avoidance, or other Determination of such Letters Patents, to the contrary notwithstanding.) And whereas by certain Covenants or Agreements on the King's Part contained in the original Reservation of some of the said Fee-farm Rents, or by the true Intent thereof, or by some Decrees in the Court of Augmentation, or Exchequer, made before the Three and Twentieth Day of *October*, in the Year of our Lord One Thousand Six Hundred Forty and Two, or since the Nine and Twentieth Day of *May*, in the Year of Our Lord One Thousand Six Hundred and Sixty, divers Fee Farmers were to be discharged, and Allowances to be made of divers Pensions, Portions, Rents Resolute, or other Things of the like Nature, and the Charge thereof hath been since allowed by his Majesty out of the said Fee-farm Rents, upon the Accounts of Bailiffs, Ministers, and Receivers; it is hereby provided and declared, That this Act, or any Thing herein contained, shall not be construed to annul or void any such Covenants or Decrees, but that the same shall be allowed against the said Purchaser or Purchasers, as it should have been against his Majesty, his Heirs and Successors, if the Letters Patents or Grants of such Fee-farm Rents hereby intended to be confirmed, had not been made; saving unto the Queen's Majesty, and to all and every other Person or Persons, Bodies Politick and Corporate, their Heirs and Successors, and every of them, (other than the King's Majesty, his Heirs and Successors, and other than the Dukes of *Cornwall* for the Time being, and other than such Person as shall have, inherit, or enjoy, the said Dukedom of *Cornwall*, by Force of any Act of Parliament or other Limitation whatsoever), all such Right, Title, and Interest, Possession, Leases, or Estates, as they or any of them had, or should or might have, or of Right ought to have had, in or to the said Rents or any of them, or any of the Lands charged or chargeable with them, or any of them, as fully and amply as they should or might have had before the Letters Patent thereof made, as if this Act had never been had or made; any Thing herein-before contained to the contrary notwithstanding.

Fee farmers before the 23d of October, 1642, and since the 29th of May, 1660, their Discharges continued.

Proviso. Claims

X. And be it further enacted, That it shall and may be lawful to and for any Bodies Politick or Corporate, to purchase any Fee-farm Rents, or other Rents, so to be conveyed as aforesaid, and the same Rents so purchased to retain and keep to them and their Successors; any Statutes of *Mortmain* to the contrary notwithstanding.

No. 25. 22 Car II c. 6. Corporations may buy and enjoy the Rents, notwithstanding the Statute of Mortmain

XI. Provided always, That neither this Act nor any Thing therein contained, shall extend, or be construed to extend, to the Sale of any the Fee-farm Rents, Tenths, Chauntry Rents, Rents Seck, or any dry or other Rents whatsoever, due or payable to his Majesty or the Prince of *Wales* for the Time being, issuing or arising within the Principality and Dominion of *Wales*; this Act, or any Thing therein contained to the contrary in anywise notwithstanding.

Principality of Wales.

XII. Instructions enacted to be observed in the Sale of Fee-farm Rents; yet so as the Breach or Non-pursuance of these Instructions, shall not invalidate or weaken the Title of any Purchaser.

1. ALL Contracts touching the Sale of any Fee-farm Rents, or other Rents before mentioned, shall be signed by the Lords Commissioners of the Treasury for the Time being, or any Two of them.

Contracts to be signed by the Lord Treasurer.

2. The Trustees shall convey to such Persons, as by Order from the Lord Treasurer, or Lords Commissioners of the Treasury, or any Two of them, they shall be directed.

3. Every Contractor shall, at or before the Time of the Sealing of his Conveyance, pay down One Moiety at least of his Purchase-money into the Exchequer, and shall also, before he shall receive his Deed of Conveyance, give Security, such as the Lord Treasurer or Lords Commissioners of the Treasury shall approve, for the Payment of the second Moiety at the Time appointed.

Purchase-money *how to be paid.*

4. Such Contractors as will pay down their whole Purchase-money, shall receive such Allowance for their Payment of their Second Moiety, as shall be thought fit, so as they exceed not the Rate of Ten *per Cent.*

Allowance.

5. The immediate Tenant liable to the Payment of any Rent, shall be preferred in the Purchase of it before any other, so as such immediate Tenant tender himself to the Lord Treasurer or Lords Commissioners of the Treasury to contract, within Six Months after the passing of the said Patent, and Notice thereof published by his Majesty's Proclamation, and perfect his Contract, and pay or secure his Money as aforesaid, within Six Months after, at such Rate as shall be agreed, not exceeding Twenty Years Purchase.

Tenants to be preferred in point of Purchase.

6. If the immediate Tenant, or some on his Behalf, do not tender, and perfect his Contract, as in the last precedent Article, all Benefit of Preference or Pre-emption is to be lost.

Within what Time Contracts to be perfected.

7. The Purchaser may have his Conveyance in the Names of any Person or Persons he shall desire.

8. If any Fee-farm Rent, or other Rent, be subject to or charged with any Payment or other Incumbrance, Consideration shall be had of it at the Time of the Contract, and Reprize allowed for it accordingly; and where such Reprize is allowed, the Purchaser is to covenant to take upon him such Incumbrance, so reprized.

Incumbrance.

9. The Trustees are to hold the Rents conveyed to them for the Benefit of his Majesty, his Heirs and Successors, until Sale.

10. The Trustees in all Conveyances to be made by them shall covenant with the Purchasers in usual Form, to free the Premises, and save the Purchaser harmless, from any Act done or suffered by them, which may any way incumber the Premises.

Covenant.

No. 25.
22 Car. II. c. 6.

Fee-farmers of Mills.

XIII. Provided always, and be it further enacted by the Authority aforesaid, That all Fee Farmers of any Mills formerly belonging to the Crown or Parcel of his Majesty's Duchy of *Lancaster*, shall have the Protection and Privilege of his Majesty's Courts of Exchequer and Duchy of *Lancaster*, and all Suits to Mills, and Aids of the said Courts, and enjoy other former Privileges and Advantages, notwithstanding the Sale of the said Fee-farms issuing out of the said Mills, to all Intents and Purposes, and in as large and beneficial Manner, as when the said Fee-farm Rents, or any of them, were payable to his Majesty, his Heirs and Successors.

All Sums of Money, Rents, &c. to be allowed to maintain School, &c. to remain as heretofore.

XIV. Provided alway, and be it enacted by the Authority aforesaid, That so much of the said Fee-farm Rents and Premises, and such Sums of Money, Rents Resolute, Pensions, Stipends, Salaries, Annuities, Alms, Corodies, Profits, and Allowances, as are due and payable, or which are chargeable upon, have been, or ought to be paid or allowed to or for the Maintenance of any Grammar School or Scholars, or for or towards the Reparation of any Church, Chapel, Highway, Causeway, Bridges, Schools, Alms-houses, Castles, or any other Uses, upon, out of, or for the Premises, or any of them, to be settled upon Trustees according to this Act as aforesaid, shall be and continue to be paid and allowed as they were and have been heretofore. And the said Trustees are hereby authorized and required to set out, convey and assure unto such Person and Persons, and their Heirs, Bodies Politick and Corporate, and their Successors and Assigns, as they the said Trustees shall think, in Trust for the Performance of the Uses aforesaid, or any of them, such of the said Fee-farm Rents, Duties, or Sums of Money payable as aforesaid as shall amount to any of the Sums so charged, limited, or allowed, to or for the Uses or Purpose aforesaid; any Thing in this Act or Instructions to the contrary notwithstanding. And after such Conveyance, the Purchasers of the Residue of the said Fee-farm Rents shall be discharged of the said Duties and Payments.

No. 26.

22 & 23 Charles II. c. 24.—An Act for vesting certain Fee-farm Rents and other small Rents in Trustees.

22 & 23 Car. II. c. 24.

22 Car. 2, c. 26.

'WHEREAS his Majesty, in pursuance of a late Act, intituled, '*An Act for advancing the Sale of Fee-farm Rents, and other* '*Rents*, hath by several Letters Patents (one bearing Date the Thirteenth Day of *June*, in the Two and Twentieth Year of his Reign, 'and the other bearing Date the Eleventh Day of *November*, in the 'Two and Twentieth Year of his Reign) granted and conveyed divers 'Fee-farm Rents, and other Rents, unto *Francis* Lord *Hawley*, Sir '*Charles Harbord*, Knt. Sir *William Haward*, Knt. Sir *John Talbot*, 'Knt. Sir *Robert Steward*, Knt. and *William Harbord*, Esq. and 'their Heirs, as Trustees for Sale thereof, most of which Rents are of 'the yearly Value of Forty Shillings *per Annum* and upwards;

'II. And whereas there are yet remaining very many small Rents 'left out of the said Letters Patents, which were intended by the said 'Act to be sold and conveyed away, the Collection of which small 'Rents is very chargeable to his Majesty, and very troublesome to the 'Subject, by Means of Under Sheriffs, Bailiffs, and Messengers necessarily imployed therein; and yet if the said small Rents should be 'conveyed by Letters Patents to Trustees for Sale thereof, the said 'Letters Patents would be of extraordinary Length, and require a

'Multitude of Recitals of many small Sums, which, besides the 'Charge in Writing, would also be an Occasion of great Hindrance 'and Delay to his Majesty's Service:' Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by Authority thereof, That all Fee-farm Rents, Rents-service, Rents-seck or Dry-rents, Chauntry-rents, Guild-rents, Castle-guard Rents, and other Rents, within the Survey of the Exchequer or Duchy of *Lancaster*, due and payable to his Majesty, his Heirs and Successors, in Possession, Reversion, or Remainder, (other than such Rents and Sums of Money as are specially saved and excepted out of the said Act), be and are hereby vested and settled in the said *Francis* Lord *Hawley*, Sir *Charles Harbord*, Sir *William Howard*, Sir *John Talbot*, Sir *Robert Stewart*, and *William Harbord*, and their Heirs, as fully and absolutely, to all Intents and Purposes whatsoever, as if the same had been particularly granted unto them by Letters Patents by virtue of the said Act, and in such Manner as is hereby directed in that Behalf; and the said Rents hereby vested in the said Trustees, shall be by them conveyed and disposed according to the Directions and Instructions mentioned in the said Act, to any Person or Persons, Bodies Politick or Corporate, who shall desire to purchase the same Rents, or any of them, upon a Particular or Certificate thereof made by the Auditor or other Officer of Record before whom the same do or shall stand in Charge respectively, which Conveyance of the said Trustees, and the Survivors and Survivor of every of them, shall be as good and effectual in Law, to all Intents and Purposes, as if the Rents so conveyed had been particularly, immediately, and well and sufficiently granted by his Majesty under the Great Seal of *England*, or the Seal of the Duchy or County Palatine of *Lancaster*.

No 26.
22 & 23 Car. II c. 24.

III. And, for the better Security and Satisfaction of the Purchasers of any the said Rents, be it enacted by the Authority aforesaid, That all and every Person or Persons, Bodies Politick and Corporate, their Heirs, Successors, and Assigns, who have already been, or hereafter shall become, Purchaser or Purchasers of any of the said Rents granted by the said recited Letters Patents, or mentioned or intended to be vested in or conveyed by these Presents to the said Trustees, shall quietly hold and enjoy the same, according to their several and respective Purchases, and shall be and are hereby saved and indemnified and kept harmless of and from all and all Manner of Incumbrances whatsoever heretofore had, made, or done, by the said Trustees, or any of them, to charge or incumber the said Rents with any Incumbrances whatsoever.

All Purchasers of Fee farm Rents to be kept harmless from all Incumbrances made by the Trustees
Such Rents how to be described in Deeds and Pleadings
10 Ann. c. 18, sect. 4.

IV. Provided always, and it is the true Intent and Meaning of these Presents, That until Sale shall be made of the said several Rents by the Trustees afore mentioned, or the Survivors or Survivor of them, their Heirs, Executors, or Administrators, that the Receiver or Receivers General of his Majesty's Revenue shall and may receive, collect, and gather the same, and every Part thereof, as fully, to all Intents and Purposes, as if the said Letters Patents, or this present Act, had not been made.

The Receivers General may receive them till Sale made

V. And lastly, be it enacted, That all such Persons as shall purchase any of the said Rents by virtue of this Act, shall have and enjoy all the Benefits and Advantages given or allowed to Purchasers by the said former Act; and the shewing of the printed Copies of this and the said former Act, and of the Conveyance made by the said Trustees, and enrolled according to the Direction of the said former Act, shall be sufficient Evidence in any Court of Justice to entitle the Purchaser and Purchasers, their Heirs and Assigns, to any Rent by

Advantages allowed to Purchasers.
22 Car. 2, c. 6.
The shewing of this Act and Deed shall be a good Evidence in any Court of Justice.

No. 26.
22 & 23 Car. II c. 24.

him, her, or them purchased, and contained in such Conveyance, without any further Proof or Evidence in that Behalf.

No Tenant in Tail of any of the said Rents, shall suffer any Recovery to bar the Remainder.

VI. Provided, That no Tenant in Tail of any the said Rents shall be enabled by this Act to suffer any Recovery, or do any other Act or Deed to bar the Remainder, hereby vested in the said Trustees and their Heirs, nor shall such Tenant in Tail have any other or greater Power over the said Rent than he had before the passing of this Act; any Thing herein-before contained to the contrary notwithstanding.

The Trustees duly executing their Authority, shall be discharged against his Majesty, &c.

VII. And be it further enacted, That the said Trustees, and the Survivors and Survivor of them, conveying and disposing of the said Rents, according to such Contracts and Agreements as shall be signed by the Lord Treasurer of *England* and Chancellor of the Exchequer, or the Lords Commissioners of his Majesty's Treasury for the Time being, pursuant to the said former or this present Act, and the Heirs, Executors, or Administrators of the said Trustees, shall be for so doing, and are hereby freed and discharged against his Majesty, his Heirs and Successors for ever.

All Purchasers may make a general Justification, by saying that the Trustees were seised in Fee, and so granted to them.

VIII. And be it further enacted by the Authority aforesaid, That every Purchaser of any of the Rents and Premises by the Intent of this or any former Act sold or appointed to be sold, their Heirs and Assigns, and all Person and Persons, their Heirs, Executors, Administrators, and Assigns, claiming by, from, or under such Purchaser or Purchasers, may sue for, make Avowry, Justification, or Conuzance, as the Case shall require, for such Rent or Rents, and Premises, and Arrears thereof, without setting forth how his Majesty or his Progenitors became entitled to such Rents or other the Premises, or setting forth or producing in Court any Letters Patents, or other Matter, whereby such Rents or Premises had Commencement, or the said Letters Patents whereby the Premises were granted, or intended to be granted, to the said *Francis* Lord *Hawley*, Sir *Charles Harbord*, Sir *William Haward*, Sir *John Talbot*, Sir *Robert Stewart*, and *William Harbord*; but it shall be sufficient in every such Suit, Avowry, Conuzance, or Justification, where Occasion shall be to set forth the Title of such Purchaser, to declare or alledge that the said *Francis* Lord *Hawley*, Sir *Charles Harbord*, Sir *William Haward*, Sir *John Talbot*, Sir *Robert Stewart*, and *William Harbord*, were seised in Fee, or in Demesne as of Fee, of such Rent or Premises, in Possession or Reversion, as the Cases requires, and so [illegible] granted the same.

Liberty given to ...hase by the ...ds expressed ...the Letters Patents, the Auditors, Certificates, or Grants from the Crown.

'IX Whereas many of the Rents vested in the said Trustees by 'the Two Patents herein-before mentioned, are either misrecited, or 'or not so fully and particularly expressed, as may be reasonably de'sired by such Purchasers:' Be it further enacted by the authority aforesaid, That the said Trustees, and the Survivor and Survivors of them, and the Heirs of such Survivors, shall and may convey the said Rents, or any of them, to the respective Purchasers, either by the Words expressed in the said Letters Patents, or by Particulars to be made out by the respective Auditors, or by the original Grants from the Crown, wherein those Rents are reserved, as the said Trustees shall find most convenient for the Satisfaction of the said Purchasers; saving unto the Queen's Majesty all such Right, Title, Interest, Possession, or Estate, as her Majesty had, should or might have had, in or unto the Rents hereby vested, or any of them, as fully and amply as her Majesty should or might have had before this present Act, and as if this Act had never been had or made; any Thing herein-before contained to the contrary notwithstanding.

A Saving to the Queen's Majesty of all her Rights, &c.

No. 27.

5 William & Mary, c. 6.—An Act to prevent Disputes and Controversies concerning Royal Mines.

[Inserted ante Class I. No. 19. See 55 Geo. III. c. 134, post.]

No. 28.

1 Anne, Stat. 1, c. 7.—An Act for the better Support of her Majesty's Household, and of the Honour and Dignity of the Crown.

P.

'V. And whereas the necessary Expences of supporting the Crown, or the greatest Part of them, were formerly defrayed by a Land Revenue, which hath from Time to Time been impaired and diminished by the Grants of former Kings and Queen's of this Realm, so that her Majesty's Land Revenues at present can afford very little towards the Support of her Government; nevertheless from Time to Time, upon the Determination of the particular Estates, whereupon many Reversions and Remainders in the Crown do now depend or expect, and by such Lands, Tenements, and Hereditaments as may hereafter descend, escheat, or otherwise accrue or come to her Majesty, her Heirs or Successors, the Land Revenues of the Crown, in Fines, Rents, and other Profits thereof, may hereafter be increased, and consequently the Burthen upon the Estates of the Subjects of this Realm may be eased and lessened in all future Provisions to be made for the Expences of the Civil Government:' To the End therefore, that the Land Revenues of the Crown may be preserved, improved, and increased for the best Advantage thereof, Be it enacted and declared by the Authority aforesaid, That all and every Grant, Lease, or other Assurance, which from and after the Five and Twentieth Day of *March* in the Year of our Lord One Thousand Seven Hundred and Two, shall be made or granted by her Majesty, her Heirs or Successors, Kings or Queens of this Realm, under the Great Seal of *England*, Exchequer Seal, Seals of the Duchy and County Palatine of *Lancaster*, or any of them, or by Copy of Court Roll or otherwise howsoever, of any Manors, Messuages, Lands, Tenements, Rents, Tithes, Woods, or other Hereditaments, (Advowsons of Churches and Vicarages only excepted); within the Kingdom of *England*, Dominion of *Wales*, or Town of *Berwick-upon-Tweed*, or any of them, or any Part thereof, now belonging or hereafter to belong to her Majesty, her Heirs or Successors, or to any other Person or Persons in Trust for her Majesty, her Heirs or Successors, in Possession, Reversion, Remainder, Use or Expectancy, whether the same be or shall be in Right of the Crown of *England*, or as Part of the Principality of *Wales*, or of the Duchy or County Palatine of *Lancaster*, or otherwise howsoever, to any Person or Persons, Body Politick or Corporate whatsoever, whereby any Estate or Interest whatsoever, in Law or Equity, shall or may pass from her Majesty, her Heirs or Successors, shall be utterly void and of none Effect, unless such Grant, Lease, or Assurance be made for some Term or Estate not exceeding One and Thirty Years, or three Lives, or for some Term of Years determinable upon one, two, or three Lives; and unless such Grant, Lease, or Assurance respectively, be made to commence from the Date or making thereof; and if such Grant, Lease, or Assurance, be made to take Effect in Reversion or

1 Anne, St. 1, c. 7.

For preserving &c the Land Revenue of the Crown, no Grant shall be made of any Manors, Lands, &c. belonging to the Crown, unless for 31 Years or three Lives, &c.

No. 28. Expectancy, that then the same, together with the Estate or Estates in Possession of and in the Premisses therein contained, do not exceed three Lives, or the Term of One and Thirty Years in the Whole, and unless such Grant, Lease, or Assurance respectively be so made, that the Tenant be liable to Punishment for Waste, and unless there be reserved upon every such Grant, Lease, or Assurance respectively, the ancient or most usual Rent, or more, or such Rent as hath been reserved, yielded, and paid for such of the said Manors, Messuages, Lands, Tenements, Rents, Tithes, or other Hereditaments, as shall be therein contained, for the greater Part of Twenty Years before the making thereof, and where no such Rent shall have been reserved or payable, that then upon every such Grant, Lease, or Assurance, there be reserved a reasonable Rent, not being under the third Part of the clear yearly Value of such of the said Manors, Messuages, Lands, Tenements, Tithes, or other Hereditaments, as shall be contained in such Lease or Grant, and unless such respective Rents be made payable to her Majesty, her Heirs or Successors, during the whole Term or Time of the Continuance thereof respectively

1 Anne st. 1, c. 7

[illegible] and pay ble to the Queen, &c.

VI. Provided always, and it is hereby enacted and declared by the Authority aforesaid, That from Time to Time, where the greatest Part of the yearly Value of any Tenements or Hereditaments, belonging, or hereafter to belong, to her Majesty, her Heirs or Successors, doth or shall, at the Time of making any Lease or Grant thereof, consist of the Building or Buildings thereupon, which may want to be repaired or re-edified, in all and every such Case and Cases, to encourage the Rebuilding or Reparation thereof, it shall and may be lawful to and for her Majesty, her Heirs and Successors, at any Time after the said Five and Twentieth Day of *March*, in the Year of our Lord One Thousand Seven Hundred and Two, to demise or grant such Tenements or Hereditaments to any Person or Persons for any Term or Estate, so as such Term, or Estate do not exceed Fifty Years, or three Lives, and so as such Lease or Grant be made to commence from the Date or making thereof; or if such Grant or Lease be made to take Effect in Reversion or Expectancy, that then the same, together with the Estate or Estates in Possession, of and in the same Tenements or Hereditaments, do not exceed Fifty Years, or three Lives, from the Date or making as aforesaid, and so as the same be not made dispunishable of Waste, and so as there be reserved and payable upon every such Lease or Grant, during such Term, not exceeding Fifty Years, or three Lives, as much Rent as is by this Act required to be reserved for the same Tenements or Hereditaments respectively, in case of a Lease, not exceeding One and Thirty Years, or three Lives, as aforesaid, and not otherwise, any Thing herein contained to the contrary notwithstanding

Tenements wanting [illegible] &c. Queen may grant [illegible] three Lives, &c.

[illegible] and [illegible] reserved [illegible] be paid

VII. And to the Intent the Inheritance, which her Majesty hath of and in the said Hereditary Duties of Excise upon Beer, Ale, and other Liquors, and of and in the said Revenue arising in the said general Letter Office or Post Office, and in the small Branches of her Majesty's Revenue herein after mentioned (that is to say) The First Fruits and Tenths of the Clergy, the Fines for Writs of Covenant and Writs of Entry, payable in the Alienation Office, the Post Fines, the Revenue of the Wine Licences, and the Revenue arising by Sheriffs Proffers, and Compositions in the Exchequer, and by Seizures of uncustomed and prohibited Goods, may be preserved in the Crown, for the future Benefit thereof; Be it further enacted and declared by the Authority aforesaid, That the said Hereditary Duties of Excise, and the said Revenue arising in the said General Letter Office or Post Office, and the said small Branches of her Majesty's Revenue last mentioned, or any of them, or any Part thereof, shall not hereafter

Duties &c. here by [illegible] not [illegible]

be alienable or grantable by her Majesty, her Heirs or Successors, for any Estate or Term whatsoever, to endure longer than the Life of her Majesty, or of such King or Queen as shall make such Alienation or Grant respectively; and that all Gifts, Grants, Alienations, Leases, and Assurances whatsoever, to be had or made of any the said Manors, Messuages, Lands, Tenements, Rents, Tithes, or other Hereditaments, or of any the said Revenues or Branches, or any Part thereof, contrary to the Provisions of this Act, or any of them, shall be null and void, without any Inquisition, *Scire facias*, or other Proceeding to determine or make void the same.

No. 28. 1 Anne, st. 1, c. 7.

Grants &c. made contrary to this Act void.

VIII. Provided always, That this Act, or any Thing therein contained, shall not extend to disable her Majesty, her Heirs or Successors, to make such Leases, Copies, or Grants, as she or they may make by virtue of an Act of Parliament made and passed in the Twelfth Year of the Reign of his said late Majesty King WILLIAM, for making Leases or Copies of Offices, Lands, or Hereditaments, Parcel of the Duchy of *Cornwall* or annexed to the same, or to alter or prejudice any the Powers, Matters, or Things therein contained, or to be done in pursuance thereof, or to disable her Majesty, her Heirs or Successors, to make any Grant or Restitution of any Estate or Estates hereafter to be forfeited for any Treason or Felony whatsoever, or to disable her Majesty, her Heirs and Successors, to Grant, Demise, or Assign any Lands, Tenements, or Hereditaments, which shall be seized or taken into her or their Hands upon any Outlawry, at the Suit of her or their Subjects, as hath been usual, or any Estate whatsoever, which is or shall be seized, extended, or taken in Execution for any Debt owing or to be due to the Crown, as she or they shall think fit, or to make any Grants or Admittances, which of Right or Custom ought to be made, of any Copyhold Lands, Tenements, or Hereditaments, Parcel of any Manor or Manors of her Majesty, her Heirs or Successors, or to disable the Trustees for Sale of Fee Farm and other Rents, to execute any the Trusts, Powers, or other Matters or Things by them to be executed, done, or performed, in pursuance of the several Acts of Parliament concerning the Sale of the said Rents, or the making of such Reprizes as ought to be made by them; any Thing herein contained to the contrary notwithstanding.

Queen may make Leases, &c. in her Duchy of Cornwall by virtue of an Act, 12 W. III. c. 13, and grant away or restore Estates forfeited for Treason, &c. or seized on Outlawry, or taken in Execution, and customary Grants of Copyhold Estates.

Trustees for Fee-farm Rents may execute their Trust, &c.

IX. Saving always to all and every Person and Persons, Bodies Politick and Corporate, their Heirs and Successors, Executors, Administrators, and Assigns, other than our said Sovereign Lady, her Heirs and Successors, all such Rights, Titles, Estates, Customs, Interests, Claims, and Demands whatsoever, of, in, or to, or out of the Revenues, Hereditaments, and other the Premisses aforesaid, or any of them, as they or any of them had or ought to have had before the making of this Act, as fully, to all Intents and Purposes, as if this Act had never been made; any Thing herein contained to the contrary notwithstanding.

Saving of Rights, &c.

No. 29.

10 Anne, c. 18.—An Act to give further Time for inrolling such Leases granted from the Crown, as have not been inrolled within the respective Times therein limited; and for making the Pleading of Deeds of Bargain and Sale inrolled, and of Fee-farm Rents, more easy.

10.

'IV. And for as much as the Fee Farm Rents, and other Rents 'purchased under an Act of Parliament made in the Twenty-second 'Year of the Reign of King CHARLES the Second, intituled *An Act for*

10 Anne, c. 18.

No. 29. 10 Anne, c. 18. Where any Fee-farm Rents, sold pursuant to 22 Car. II. c. 6, and 22 and 23 Car. II. c. 24, are described in any Deeds, &c. as they were in the Indentures of Bargain and Sale by Trustees, such shall

the advancing the Sale of Fee Farm Rents, and other Rents, and one other Act made in the Twenty-second and Twenty-third Years of the same Reign, intituled, *An Act for vesting certain Fee Farm Rents, and other small Rents in Trustees,* cannot always be so fully and particularly described, as may be requisite for conveying or pleading the same: For the better deriving and pleading the Title to such Rents, from the Trustees appointed for the selling thereof, pursuant to either of the said Acts, and clearing all Doubts relating to the naming or describing thereof; Be it enacted and declared by the Authority aforesaid, That where any Rent or Rents, intended by the said Acts, or either of them, to be sold, and sold pursuant thereto, is, are, or shall be named or described in any Deeds, Fines, Recoveries, or other Assurances, or in any Declaration, Bar, Avowry, Replication, or other Pleading whatsoever, by such or the like Names or Descriptions, as the same were named or described by the Indentures of Bargain and Sale made by the Trustees for Sale thereof, pursuant to the said Acts, or either of them, such Names or Descriptions may serve, and are and shall be sufficient for the conveying, deriving, or pleading the Title to such Rent or Rents from or under the said Trustees, and shall be at all Times deemed, judged, and allowed so to be, in all Courts of Law, or elsewhere.

Not to extend to Rent which has not been paid in

V. Provided always, That nothing in this Act contained, shall extend to give or allow any Benefit or Advantage in pleading or deriving Title to any Rent which hath not been paid or levied within twenty Years next before the Time of such pleading or deriving Title to the same.

No. 30.

9 George III. c. 16.—An Act to amend and render more effectual an Act made in the Twenty-first Year of the Reign of King JAMES the First, intituled, *An Act for the general Quiet of the Subjects against all Pretences of Concealment whatsoever.*

Geo. III. c. Stat. 21 Jac.

'WHEREAS an Act of Parliament was made and passed in the 'Twenty-first Year of the Reign of King JAMES the First, 'intituled, *An Act for the general Quiet of the Subjects against all 'Pretences of Concealment whatsoever*; and thereby the Right and 'Title of the King, his Heirs and Successors, in and to all Manors, 'Lands, Tenements, Tythes and Hereditaments (except Liberties and 'Franchises), were limited to Sixty Years next before the Beginning 'of the said Session of Parliament; and other Provisions and Regula-'tions were therein made, for securing to all his Majesty's Subjects the 'free and quiet Enjoyment of all Manors, Lands, and Hereditaments, 'which they, or those under whom they claimed, respectively had, 'held, or enjoyed, or whereof they had taken the Rents, Revenues, 'Issues, or Profits, for the Space of Sixty Years next before the Begin-'ning of the said Session of Parliament: And whereas the said Act is 'now, by Efflux of Time, become ineffectual to answer the good End 'and Purpose of securing the general Quiet of the Subject against all 'Pretences of Concealment whatsoever:' Wherefore be it enacted by the King's most Excellent Majesty, by and with the Assent and Consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the Authority of the same, That the King's Majesty, his Heirs and Successors, shall not at any Time hereafter, sue, impeach, question, or implead, any Person or Persons,

The Crown disabled to implead for any Manors, &c. where the Right hath not, or shall not first accrue and grow within 60 Years next before, &c.

No. 30. 9 Geo. III. c. 16.

Bodies Politick or Corporate, for or in any wise concerning any Manors, Lands, Tenements, Rents, Tythes, or Hereditaments whatsoever, (other than Liberties or Franchises), or for or in any wise concerning the Revenues, Issues or Profits thereof, or make any Title, Claim, Challenge, or Demand, of, in, or to the same, or any of them, by Reason of any Right or Title which hath not first accrued and grown, or which shall not hereafter first accrue and grow, within the Space of Sixty Years next before the filing, issuing, or commencing, of every snch Action, Bill, Plaint, Information, Commission, or other Suit and Proceeding, as shall at any Time or Times hereafter be filed, issued, or commenced, for recovering the same, or in respect thereof; unless his Majesty, or some of his Progenitors, Predecessors or Ancestors, Heirs or Successors, or some other Person or Persons, Bodies Politick or Corporate, under whom his Majesty, his Heirs or Successors, any Thing hath or lawfully claimeth, or shall have or lawfully claim, have or shall have been answered by Force and Virtue of any such Right or Title to the same, the Rents, Revenues, Issues, or Profits thereof, or the Rents, Issues, or Profits of any Honour, Manor or other Hereditaments, whereof the Premises in question shall be Part or Parcel, within the said Space of Sixty Years; or that the same have or shall have been duly in charge to his Majesty, or some of his Progenitors, Predecessors, or Ancestors, Heirs, or Successors, or have or shall have stood *insuper* of Record within the said Space of Sixty Years: And that all and every Person and Persons, Bodies Politick and Corporate, their Heirs and Successors, and all claiming by, from, or under them, or any of them, for and according to their and every of their several Estates and Interests which they have, or claim to have, or shall or may have or claim to have, in the same respectively, shall at all Times hereafter, quietly and freely have, hold, and enjoy, against his Majesty, his Heirs and Successors, claiming by any Title which hath not first accrued or grown, or which shall not hereafter first accrue or grow, within the said Space of Sixty Years, all and singular Manors, Lands, Tenements, Rents, Tythes, and Hereditaments whatsoever (except Liberties and Franchises), which he or they, or his or their, or any of their Ancestors or Predecessors, or those from, by, or under whom they do or shall claim, have or shall have held or enjoyed, or taken the Rents, Revenues, Issues, or Profits thereof, by the Space of Sixty Years next before the filing, issuing, or commencing of every such Action, Bill, Plaint, Information, Commission, or other Suit or Proceeding as shall at any Time or Times hereafter be filed, issued, or commenced for recovering the same, or in respect thereof; unless his Majesty, or some of his Progenitors, Predecessors, or Ancestors, Heirs or Successors, or some other Persons, Bodies Politick or Corporate, by, from, or under whom his Majesty, his Heirs, or Successors, any Thing hath or lawfully claimeth, or shall have or lawfully claim, in the said Manors, Lands, Tenements, Rents, Tythes, Hereditaments, by Force of any Right or Title, have been or shall have been answered, by Virtue of any such Right or Title, the Rents, Revenues, Issues, or other Profits thereof, within the said Space of Sixty Years; or that the same have or shall have been duly in Charge, or stood *insuper* of Record as aforesaid, within the said Space of Sixty Years: And furthermore that all and every Person and Persons, Bodies Politick and Corporate, their Heirs and Successors, and all claiming or to claim by, from, or under them, or any of them, for and according to their and every of their several Estates and Interests which they have or claim, or shall or may have or claim, respectively, shall, for ever hereafter, quietly and freely have, hold, and enjoy, all such Manors, Lands, Tenements, Rents, Tythes, and Hereditaments (except Liberties and Franchises), as they now have,

No. 30. 9 Geo. III. c. 16.

claim, or enjoy, or hereafter shall or may have, claim, or enjoy, whereof his Majesty, his Progenitors, Predecessors, or Ancestors, or whereof his Majesty, his Heirs, or Successors, or he or they by, from, or under whom his Majesty, his Heirs, or Successors, any Thing hath or lawfully claim, or some of them, by Force of some Right or Title to the same, have not or shall not have been answered, by Virtue of such Right or Title, the Rents, Revenues, Issues, or Profits thereof, within the Space of Sixty Years next before the filing, issuing, or commencing of every such Action, Bill, Plaint, Information, Commission, or other Suit or Proceeding as shall at any Time or Times hereafter be filed, issued, or commenced, for recovering the same, or in respect thereof, nor the same have been nor shall have been duly in Charge, or stood *insuper* of Record as aforesaid, within the said Space of Sixty Years against all and every Person and Persons, their Heirs and Assigns, having, claiming, or pretending to have, or who shall or may have, claim, or pretend to have any Estate, Right, Title, Interest, Claim, or Demand whatsoever, of, in, or to the same, by Force or Colour of any Letters Patents or Grants, upon Suggestion of Concealment or wrongful detaining, or not being in Charge, or defective Titles, or by, from, or under, any Patentees or Grantees, or any Letters Patents or Grants, upon Suggestion of Concealment or wrongful detaining, or not being in Charge, or defective Titles, of or for which said Manors, Lands, Tenements, Rents, Tythes, and Hereditaments, or any of them, no Verdict, Judgment, Decree, Judicial Order upon Hearing, or Sentence of any Court now standing in Force, hath been had or given, or any such Verdict, Judgment, Decree, Judicial Order upon Hearing, or Sentence of Court, shall hereafter be had or given, in any Action, Bill, Plaint, or Information, in any of his Majesty's Courts at *Westminster*, for or in the Name of the King's Majesty, or any of his Ancestors, Progenitors, Predecessors, Heirs, or Successors, or for any of the said Patentees or Grantees, or for their or any of their Heirs, or Assigns, within the Space of sixty Years next before the filing, issuing, or commencing of every such Action, Bill, Plaint, Information, Commission, or other Suit or Proceeding as shall at any Time or Times hereafter be filed, issued, or commenced, for recovering the same, or in respect thereof as aforesaid.

II. Provided always, and be it enacted, That where the Rents, Revenues, Issues, or Profits of any Manors, Lands, Tenements, Tythes, or Hereditaments, are or shall be in Charge, by, to, or with any Auditor or Auditors, or other proper Officer or Officers of the Revenue, such Rents, Revenues, Issues, and Profits, shall be held, deemed, and taken to be duly in Charge within the Meaning and Intent of this Act; any Usage or Custom to the contrary notwithstanding.

III. Provided always, That this Act, or any Thing therein contained, shall not extend to bar, impeach, or hinder his Majesty, his Heirs or Successors, of, for, or from, any Manors, Tenements, Rents, Tythes, or Hereditaments, whereof any Reversion or Remainder now is in his Majesty, for or concerning the said Reversion or Remainder; nor of, for or from any Reversion or Remainder, or Possibility of Reversion or Remainder, in any of his Majesty's Progenitors, or Predecessors, or Ancestors, which by the Expiration, End, or other Determination of any limited Estate of Fee-simple, or of any Fee-tail or other particular Estate, hath or ought to have first fallen or become in Possession, or which shall, or may, or ought hereafter first to fall or come in Possession, within the Space of sixty Years next before the filing, issuing, or commencing of any such Action, Bill, Plaint, Information, Commission, or other Suit or Proceeding, as shall at any

Time or Times hereafter be filed, issued, or commenced, for recovering the same, or in respect thereof; nor of, for, or from any Right or Title first accrued or grown to his Majesty, or any of his Progenitors, Predecessors, or Ancestors, or which shall first accrue or grow to his Majesty, or any of his Heirs, or Successors, of, in, or to, any Manors, Lands, Tenements, Rents, Tythes, or Hereditaments, at any Time or Times within the Space of sixty Years next before the filing, issuing, or commencing of any such Action, Bill, Plaint, Information, Commission, or other Suit of Proceeding as shall at any Time or Times hereafter be filed, issued, or commenced, for recovering the same, or in respect thereof, and not before. No. 30. 9 Geo. III. c. 16.

IV. Provided also, and be it enacted by Authority of this present Parliament, That this Act, or any Thing therein contained, shall not extend to any Manors, Lands, Tenements, Rents, Tythes, or Hereditaments, mentioned to be granted or conveyed by any of his Majesty's Progenitors, Predecessors, or Ancestors, or by any other under whom his Majesty claimeth, to any Person or Persons, of any limited Estate in Fee-simple, or of any Estate in Tail, or other particular Estate, which several Estates (if the same had been good and effectual in Law,) have or ought to have first fallen or become in Possession, or will or ought first to fall or come in Possession, within the Space of sixty Years next before the filing, issuing, or commencing, of any such Action, Bill, Plaint, Information, Commission, or other Suit or Proceeding as shall at any Time or Times hereafter be filed, issued, or commenced, for recovering the same, or in respect thereof as aforesaid; nor to any Manors, Lands, Tenements, Rents, Tythes, or Hereditaments, mentioned to be granted or conveyed by any of his Majesty's Progenitors, Predecessors, or Ancestors, or by any other under whom his Majesty claimeth, to any Person or Persons in Fee-tail, or other particular Estate, whereof the Reversion or Inheritance (if such Estate Tail, or other particular Estate, had been good and effectual in Law,) should have been and continued in his Majesty, or any of his Progenitors, Predecessors, or Ancestors, or should or ought hereafter to be and continue in his Majesty, his Heirs and Successors, at any Time within the Space of sixty Years next before the filing, issuing, or commencing of any such Action, Bill, Plaint, Information, Commission, or other Suit or Proceeding, as shall at any Time or Times hereafter be filed, issued, or commenced, for recovering the same, or in respect thereof as aforesaid. Limitation of the Act with respect to Grants from the Crown of any limited Estate, &c.

V. Provided always, and be it enacted by the Authority of this present Parliament, That all and singular the said Manors, Lands, Tenements, and Hereditaments, shall at all Times hereafter be holden of his Majesty, his Heirs and Successors, and of other Person and Persons, Bodies Politick and Corporate, their Heirs and Successors respectively, by the same Tenures, Services, Fee-farms, Chief-rents, Heriots, and other Duties to all Intents and Purposes, as the same should or ought of right to have been holden, if the Estates, Rights, and Interests, established and made sure by this present Act, had been, before the making of this Act, firm, good, and effectual in Law. The said Manors, &c. to be holden of the Crown upon the usual Tenures.

VI. Saving to every Person and Persons, Bodies Politick and Corporate, their Heirs and Successors (other than his most Excellent Majesty, his Heirs and Successors, and other than all Patentees or Grantees of Concealments, or defective Titles, and all and every Person or Persons claiming from, by, or under them, or any of them, for or in respect or by reason of any such Patents or Grants of Concealments, or defective Titles,) all such Rights, Title, Interest, Estate, Rents, Commons, Customs, Duties, Profits, and other Claims and Demands whatsoever, in, to, or out of the said Manors, Lands, Tenements, Tythes, or Hereditaments, as they or any of them had or General Reservation of Rights.

No. 30. ought to have had before the making of this Act; any Thing in this
9 Geo. III. c. 16. Act to the contrary notwithstanding.

VII. Provided also, and be it enacted, That where any Fee Farm Rent, or other Rent or Rents, have been or shall be answered and actually paid to the King's Majesty, or to any his Predecessors, Heirs, or Successors, within the Space of Sixty Years next before an Action, Bill, Plaint, Information, Commission, or other Suit or Proceeding, shall at any Time or Times hereafter be filed, issued, or commenced, for recovering the same, or in respect thereof, out of any Manors, Lands, Tenements, or Hereditaments, of which Manors, Lands, Tenements, or Hereditaments, the Estates, Rights, or Interests being defective, are established, and made sure by this present Act, that the King's Majesty, his Heirs and Successors, shall from henceforth for ever have, hold, and enjoy the said Rents and Arrearages thereof, in such Manner and Form, and as fully and amply, as the same are or were enjoyed at any Time within the said Space of Sixty Years.

VIII. Provided always, and be it enacted, That nothing in this Act contained shall extend or be prejudicial to the Right, Title, or Claim, of any Person or Persons in or to any Manors, Lands, Tenements, or Hereditaments, by virtue of, or under any Grant or Grants, Letters Patent or Letters Patents, from any of his Progenitors, Ancestors, or Predecessors, or by virtue of, or under any Grant or Grants, Letters Patent or Letters Patents, from his Majesty, made or passed before the First Day of *January*, One Thousand Seven Hundred and Sixty Nine; so as such Right, Title, or claim, be prosecuted with Effect by Bill, Plaint, Information, or other Suit, or Proceeding, in some of his Majesty's Courts of Record at *Westminster*, within the Space of One Year from the First Day of *January*, One Thousand Seven Hundred and Sixty Nine.

IX. Provided always, and be it enacted, That nothing in this Act contained shall extend or be prejudicial to any Right, Title, or Claim, which his Majesty now hath to any Lands, Tenements, or Hereditaments, within the Manor of *East Greenwich*, in the County of *Kent*; or to any Messuages, Lands, Tenements, or Hereditaments, within the Precinct, District, or Liberty, commonly called the *The Savoy*, in the County of *Middlesex*; or to any the Manors, Messuages, Advowsons, Buildings, Lands, Tenements, Hereditaments, and Appurtenances, being the Estate and Possession of the late Hospital of the *Savoy*, or of the Master and Chaplains of the said Hospital; so as such Right, Title, or Claim, be prosecuted with Effect by Bill, Plaint, or Information, or other Suit or Proceeding, in some of his Majesty's Courts of Record at *Westminster*, within the Space of two Years from the first Day of *January*, One Thousand Seven Hundred and Sixty-nine.

X. Provided always, and be it enacted by the Authority of this present Parliament, That no putting in Charge, nor standing *insuper*, nor taking or answering the Farm Rents, Revenues, or Profits of any of the said Manors, Lands, Tenements, or Hereditaments, by Force, Colour, or Pretext of any Letters Patent or Grants of Concealments, or defective Titles, or of Manors, Lands, Tenements, or Hereditaments, out of Charge, or by Force, Colour, or Pretext, of any Inquisitions, Presentments, by or by Reason of any Commission or other Authority to find out Concealments, defective Titles, or Lands, Tenements, or Hereditaments out of Charge, shall be deemed, construed, or taken to be a putting in Charge, standing *insuper*, or taking or answering the Farm Rents, Revenues, or Profits by or to his Majesty, or any of his Progenitors or Predecessors, Heirs or Successors; unless thereupon such Manors, Lands, Tenements, or Hereditaments, have been or shall be, upon some Information or Suit, on the Behalf of

his Majesty, or some of his Progenitors or Predecessors, Heirs or Successors, upon a lawful Verdict given or to be given, or Demurrer in Law adjudged, or upon a Hearing, ordered or decreed for his Majesty, or some of his Progenitors or Predecessors, Heirs or Successors, or some of them, within the Space of Sixty Years next before the filing, issuing, or commencing of every such Action, Bill, Plaint, Information, Commission, or other Suit or Proceedings as shall at any Time or Times hereafter be filed, issued, or commenced, for recovering the same, or in respect thereof as aforesaid. No. 30. 9 Geo III. c. 16.

No. 31.

19 George III. c. 45.—An Act to enable the Chancellor and Council of the Duchy of *Lancaster* to sell and dispose of certain Fee-farm Rents, and other Rents, and to enfranchise Copyhold and Customary Tenements, within their Survey, and to encourage the Growth of Timber on Lands held of the said Duchy.

No. 32.

26 George III. c. 87.—An Act for appointing Commissioners to enquire into the State and Condition of the Woods, Forests, and Land Revenues, belonging to the Crown; and to sell or alienate Fee-farm or other unimprovable Rents.

No. 33.

27 George III. c. 34.—An Act to amend an Act, passed in the Nineteenth Year of the Reign of his present Majesty, intituled, *An Act to enable the Chancellor and Council of the Duchy of* Lancaster *to sell and dispose of certain Fee-farm Rents, and other Rents, and to enfranchise Copyhold and Customary Tenements within their Survey; and to encourage the Growth of Timber on Lands held of the said Duchy;* and to enable the said Chancellor and Council to discharge Incumbrances affecting the Possessions of the said Duchy.

No. 34.

30 George III. c. 50.—An Act to continue and amend an Act, made in the Twenty-sixth Year of the Reign of his present Majesty, intituled, *An Act for appointing Commissioners to enquire into the State and Condition of the Woods, Forests, and Land Revenues belonging to the Crown; and to sell or alienate Fee-farm, and other unimprovable Rents.*

No. 35.

34 George III. c. 75.—An Act for the better Management of the Land Revenue of the Crown, and for the Sale of Fee-farm and other unimprovable Rents.

[*11th June*, 1794.]

34 Geo. III c. 75
1 Anne, Cap. 1, recited.

WHEREAS it is expedient that Provision should be made for the better Management of the Land Revenues of the Crown, within the Ordering and Survey of the Exchequer in *England*: And whereas 'by an Act, made in the first Year of the Reign of Queen 'Anne. (intituled, *An Act for the better Support of her Majesty's 'Household, and of the Honour and Dignity of the Crown,)* it was '(amongst other Things) enacted and declared, that all and every 'Grant, Lease, or other Assurance which, from and after the five and 'twentieth Day of *March* One Thousand Seven Hundred and Two, 'should be made or granted by the said Queen, her Heirs or Succes- 'sors, Kings or Queens of this Realm, under any of the Seals therein 'mentioned, or by Copy of Court Roll, or otherwise howsoever, of 'any Manors, Messuages, Lands, Tenements, Rents, Tithes, Woods, 'or other Hereditaments, (Advowsons of Churches and Vicarages only 'excepted,) to any Person or Persons, Body Politick or Corporate 'whatever, whereby any Estate or Interest should pass from the said 'Queen, her Heirs or Successors, should be utterly void and of none 'Effect unless the same should be made for some Term or Estate not 'exceeding Thirty-one Years, or three Lives, and unless there should 'be reserved, by such Grants, Leases, or Assurances, such Rents as in 'the said Act are expressed; in which said Act is contained a Pro- 'viso, that where the greatest Part of the Yearly Value of any Tene- 'ments or Hereditaments belonging to the said Queen, her Heirs and 'Successors, should at the Time of making any Lease or Grant thereof 'consist of the Building or Buildings thereupon, which might want to 'be repaired or re-edified, in every such Case to encourage the Rebuild- 'ing or Reparation thereof, it was declared and enacted, that it should 'be lawful for the said Queen, her Heirs and Successors, at any Time 'after the said five and twentieth Day of *March*, One Thousand Seven 'Hundred and Two, to demise or grant such Tenements or Heredita- 'ments to any Person or Persons for any Term or Estate, so as such 'Term and Estate did not exceed Fifty Years, or three Lives, and so 'as such Lease or Grant should be made to commence from the Date 'or making thereof; or if such Grant or Lease should be made to take 'Effect in Reversion or Expectancy, that then the same, together with 'the Estate or Estates in Possession of and in the same Tenements or 'Hereditaments, should not exceed Fifty Years, or Three Lives from 'the Date or making thereof as aforesaid, and so as the same should 'not be made dispunishable of Waste, and so as there should be re- 'served and payable upon every such Lease or Grant, during such 'Term, not exceeding Fifty Years, or Three Lives, as much Rent as 'was by the said Act required to be reserved for the same Tenements 'or Hereditaments respectively, in case of a Lease not exceeding One 'and Thirty Years or Three Lives, and not otherwise: And whereas, 'the better to encourage the erecting of large substantial Houses and 'Buildings upon the Lands of the Crown within the Ordering and 'Survey aforesaid, and for the Improvement of the Revenue arising 'therefrom, it is expedient that the Powers in and by the said Act con- 'tained and given for demising and granting any Tenements or Here- 'ditaments of the Description last aforesaid should be enlarged, and 'further Provision made for securing an Improvement and Increase

No 35.
31 Geo. III. c. 75.

'of the Rents to be in future paid or reserved in respect thereof:' Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said recited Proviso in the said Act of the First Year of Queen *Anne* contained, so far as the same is contrary to any of the Provisions in this Act, shall be, and the same is hereby repealed; and that all and every Lease or Grant which, after the passing of this Act, shall be made or passed under the Great Seal, or the Seal of the Exchequer, of any Tenements or Hereditaments whereof the greatest Part of the Yearly Value shall consist of the Buildings thereupon, or of any Land or Ground which shall be set apart or appropriated for Buildings, by force and virtue of this Act, and where the Lessee or Grantee, Lessees or Grantees, shall agree and covenant to erect Buildings thereon of greater Yearly Value than the Land or Ground so to be leased or granted, shall be made for such Term, Estate, and Interest, and in such Manner as by this Act is directed, and not otherwise, or in other Manner; and if any Lease or Grant shall be made of any such Tenements or Hereditaments, Land or Ground, contrary to the Authority and Directions of this Act, the same shall be utterly void and of none Effect; any Thing in the said Act of the first Year of Queen *Anne* contained to the contrary notwithstanding.

Clause 6 of recited Act, so far as contrary to this Act, repealed.

II. Provided always, and be it further enacted, That nothing herein contained shall extend, or be construed to extend, to affect any subsisting Lease or Grant already made by the Crown, under and by virtue of the said recited Act, but that such Lease or Grant shall remain and be in as full Force and Effect, to all Intents and Purposes, as if this Act had not been made.

Act not to affect subsisting Leases or Grants.

III. And be it further enacted by the Authority aforesaid, That where any Land or Ground belonging or hereafter to belong to his Majesty, his Heirs or Successors, within the Ordering and Survey aforesaid, shall be deemed, by the Lord High Treasurer or Commissioners of the Treasury for the Time being, fit and proper for the Erection of Houses or other Buildings thereupon, or for necessary Gardens, Yards, Curtilages, and other Appurtenances, to be used and enjoyed therewith; and shall be by their Order directed to be reserved or set apart and appropriated to that Use, and where the Lessee or Grantee, Lessees or Grantees, shall agree and covenant to erect Buildings thereon of greater Yearly Value than the Land or Ground so to be leased or granted, or where the greatest Part of the Yearly Value of any Tenements or Hereditaments belonging to his Majesty, his Heirs or Successors, as aforesaid, doth or shall, at the Time of making any Lease or Grant thereof, consist of any Building or Buildings thereupon, in all and every or any of such Cases, it shall and may be lawful for his Majesty, his Heirs or Successors, to demise or grant the Land or Ground so directed to be set apart as aforesaid, or the Tenements or Hereditaments of the Description last aforesaid respectively, to any Person or Persons, or to any Body or Bodies Politick or Corporate, under the Great Seal of *Great Britain*, or the Seal of the Exchequer, for any Term or Estate, so as such Term or Estate do not exceed Ninety Nine Years, or Three Lives, to be computed from the Date or making of any such Lease or Grant respectively; or if any such Lease or Grant be made to take Effect in Reversion or Expectancy, then that the Term and Estate thereby to be granted, together with the Term or Estate, Terms or Estates, in Possession of and in the same Land and Ground, Tenements and Hereditaments respectively, shall not exceed Ninety Nine Years, or Three Lives, computed from the Date or making thereof as aforesaid; and so as the respective

His Majesty may grant Land for building, for 99 Years or three Lives, where the Lessees agree to make Erections of greater yearly Value than the Land, or where the greatest Part of the yearly Value of the Premises consists of Buildings, &c.

No. 55. 34 Geo. III. c. 75.

Rents hereinafter specified be reserved for the same, (that is to say,) where there shall happen to be any substantial Building or Buildings upon the Ground to be demised, or that the Building or Buildings thereupon shall not require, or not be intended and agreed to be rebuilt, there shall be reserved to his Majesty, his Heirs and Successors, an Annual Rent or Rents not being less than two-third Parts of such Annual Sum as shall be deemed by the Lord High Treasurer, or Commissioners of the Treasury for the Time being, a reasonable Rent or Consideration for such Building or Buildings and Ground respectively, for the Term and Estate intended to be granted of and in the same; and so as there be paid to the Use of his Majesty, his Heirs and Successors, a Fine or Fines to the Amount of the remaining Part of such Annual Sum as aforesaid, subject to a Discount, which shall not be computed at a higher Rate than the highest legal Rate of Interest at the Time of making any such Grant or Lease; and when there shall happen to be no substantial Building upon the Land or Ground to be demised, or that the Building or Buildings there upon require, or shall be intended and agreed to be forthwith rebuilt, or other new Buildings to be erected upon such Land or Ground, then, and in that Case, there shall be reserved such Annual Rent or Rents as shall be deemed, by the Lord High Treasurer, or Commissioners of the Treasury for the Time being, to be a reasonable Rent or Consideration for such Land or Ground and old Buildings respectively, for the Term and Estate intended to be granted of and in the same, without taking any Fine for the same; and so as in every Lease or Grant of Land or Ground and Buildings of the Description last aforesaid, there be contained a Covenant or Condition on the Part of the Lessee or Grantee, for the erecting of proper and substantial Houses or other Buildings thereon, within reasonable Time, to be in each Case limited for that Purpose, and such other Covenants for keeping Buildings in Repair, and doing all such other Acts as the Lord High Treasurer or Comismisioners of the Treasury for the Time being shall think reasonable; and so as all and every such Rent and Rents be reserved to be paid, free and clear of all Manner of Taxes and Assessments whatsoever, for and during the Whole of the Term or Terms to be granted or demised, except such Rent, or such Part thereof, during such Part of such Term or Terms as the Lord High Treasurer, or Commissioners of the Treasury for the Time being, shall in any Case think fit and expedient to be allowed, not exceeding in any Case the Term of Three Years; and so as every such Grantee or Lessee, Grantees or Lessees, shall and do duly sign, seal, and deliver a Counterpart or Counterparts of his, her, or their respective Grant or Lease, Grants or Leases, which Counterparts shall not be subject to any Stamp Duty; and that all and every such Grants and Leases so made as aforesaid, according to the true Intent and Meaning of this Act, shall be good, valid, and effectual in the Law; any Thing contained in the said Act of the first of Queen *Anne*, or in any other Act, to the contrary notwithstanding.

On every Grant (except as herein excepted) Annual Rents to be reserved, without taking any Fine, &c.

IV. And be it further enacted by the Authority aforesaid, That on every Grant, Lease, or other Assurance which shall be made or granted by his Majesty, his Heirs or Successors, under the Great Seal, or Seal of the Exchequer, or either of them, of any Manors, Messuages, Lands, Tenements, Rents, Tithes, Woods, or other Hereditaments, (Advowsons of Churches and Vicarages, and such Tenements and Grounds, with Edifices or Buildings erected thereon, as are hereby authorized to be granted for any Term not exceeding ninety-nine Years or three Lives, and whereon any Fine or Fines shall be payable as aforesaid, only excepted,) within the Kingdom of *England* and Dominion of *Wales*, or any of them, or any Part thereof, now belonging, or hereafter to belong to his Majesty, his

No. 35.
31 Geo. III c. 75.

Heirs or Successors, and being within the Ordering and Survey aforesaid, in Possession, Reversion, Remainder, Use, or Expectancy to any Person or Persons, Body Politic or Corporate, whereby any Estate or Interest whatever, in Law or Equity, shall or may pass from his Majesty, his Heirs or Successors, there shall be reserved such clear Annual Rent or Rents as shall be deemed by the Lord High Treasurer, or Commissioners of the Treasury for the Time being, to be a reasonable Rent or Consideration for such Grant or Lease, without taking any Fine for the same; and such Rent or Rents shall be made payable to his Majesty, his Heirs and Successors, during the whole Term or Time of the Continuance thereof respectively; and no such Lease or Grant, Leases or Grants, shall be good or effectual in the Law, unless the Grantee or Lessee, Grantees or Lessees therein, do and shall duly sign, seal, and deliver a Counterpart or Counterparts of his, her, or their respective Grant or Lease, Grants or Leases, so made as aforesaid, according to the true Intent and Meaning of this Act, which Counterparts shall not be subject to any Stamp Duty.

Grants not to be renewed until within a certain Number of Years prior to their Expiration;

V. And be it further enacted by the Authority aforesaid, That it shall not be lawful to renew any Lease or Grant of any Manors, Messuages, Lands, Tenements, Tithes, Woods, or other Hereditaments now belonging or hereafter to belong to his Majesty, his Heirs or Successors, within the Ordering and Survey aforesaid, for any Term of Years whatever, until within five Years of the Period of the Expiration of the same, except such Tenements and Hereditaments as are hereby authorized to be granted for any Term not exceeding ninety-nine Years, nor to renew any Grant or Lease of any such Tenements or Hereditaments as are hereby authorized to be granted for such Term not exceeding ninety-nine Years, until within twenty Years of the Period of the Expiration of the same, nor any Lease or Grant for Lives, so long as there shall be more than one of such Lives in being, except in the Cases hereinafter mentioned.

except in Cases herein specified.

VI. Provided always, and it is hereby enacted and declared, That if it shall appear to the Satisfaction of the Lord High Treasurer, or Lords Commissioners of the Treasury for the Time being, that any Persons or Person have or has, at any Time before the passing of this Act, entered into any Covenants or Engagements to obtain Renewals of Leases at earlier Periods, in Confidence that the same could be renewed according to the ordinary Practice in such Cases, it shall be lawful in such Cases to renew any Lease or Grant at a greater Distance of Time from the Period of the Expiration thereof, so as to enable such Person or Persons to perform such Covenants or Engagements; any Thing herein contained to the contrary notwithstanding: Provided also, That if any Person or Persons shall be the Lessee or Lessees of any Tithes of any Lands, or of any other Profits issuing out of any Lands, and shall be also the Owner or Owners of, or interested in such Lands, it shall be lawful for the Lord High Treasurer, or Lords Commissioners of the Treasury for the Time being, to order a Renewal of Leases of such Tithes or other Profits, at such Times as shall appear to them convenient for the most beneficial Enjoyment of such Tithes or other Profits, together with such Lands respectively: Provided also, That if it shall be made appear to the Satisfaction of the Lord High Treasurer, or Lords Commissioners of his Majesty's Treasury for the Time being, that any Persons or Person having any Lease of any Lands belonging to his Majesty have or has, before the passing of this Act, made any Demise of such Lands, or entered into any Agreement to demise the same, for the Purpose of improving the same by building, and have or has entered into any Covenants or Engagements, in consequence whereof such Persons or Person would, by reason of the Improvements so made, be bound to pay, upon the

Abatement of Rent and Fine may be made in certain Cases.

No. 35. 31 Geo. III. c. 75. Renewal of any Lease or Grant of such Lands, more than such Persons or Person would be entitled to receive from the Under Lessees or Lessee thereof, it shall be lawful for the Lord High Treasurer, or Commissioners of the Treasury for the Time being, to make a just Abatement in the Rent and Fine to be reserved and paid to his Majesty, his Heirs and Successors, in consequence of such Improvement, and that such Lease or Grant as shall be made (Regard being had to such Circumstances) shall be good and effectual; any Thing in this Act contained to the contrary notwithstanding.

Leases of Wastes, &c. for Improvement, and of Lands for the Growth of Wood, &c. may be renewed agreeable to recited or this Act.

VII. Provided always, and it is hereby enacted and declared, That where any Wastes, Commons, or other unenclosed Lands or Grounds, within the Ordering and Survey aforesaid, in which his Majesty, his Heirs and Successors, has or shall have any Interest, shall be deemed fit and proper to be divided, enclosed, drained, or otherwise improved, and shall be, by Authority of Parliament or otherwise, authorized and directed to be divided and enclosed, or where any Lands or Grounds belonging to and held under any Lease or Grant from his Majesty, his Heirs or Successors, or from any of his Majesty's Royal Predecessors, under the Great Seal, or Seal of the Exchequer, shall be deemed, by the Lord High Treasurer, or Commissioners of the Treasury for the Time being, fit and expedient to be planted and appropriated to the Growth of Wood or Timber, or any Farm House, or other substantial Building, to be erected for the better Management and Improvement of any Lands or Grounds, or any Pits, Shafts, Levels, Watercourses, Engines, or other Works, to be digged, sunk, erected, or made for the better and more advantageous working of any Mines, Quarries, or Collieries belonging to his Majesty, his Heirs or Successors, and held as aforesaid, and where the Term or Estate in Possession of and in the same respectively shall be deemed, by the Lord High Treasurer, or Commissioners of the Treasury, to be insufficient to repay the Costs and Charges of such Works and Improvements, with reasonable Profit and Advantage to the Parties making or causing the same to be made, or to their Representatives or Assigns, in all and every such Case and Cases it shall and may be lawful, at any Time or Times hereafter, to renew any such Lease, or to grant any further or other Lease of any such Lands or Grounds, Mines, Quarries, or Collieries, or any Part thereof, for any Term or Estate, not exceeding the Terms or Estates authorized to be granted of Lands, Tenements, or Hereditaments of such or the like Descriptions, by the said Act of the first Year of Queen Anne, or by this Act; and that

Where Houses, &c. are to be rebuilt &c. further Leases may be granted.

where any Houses or other Buildings shall require, or shall be intended and agreed to be rebuilt, or any new Houses or other Buildings to be erected, or where any Houses or other Buildings have been, at any Time before the passing of this Act, erected upon any Land or Ground belonging to, and held under, any Lease or Grant, whereof the Term or Estate in Possession at the Time of erecting such Houses or other Buildings respectively shall be deemed, by the Lord High Treasurer, or Commissioners of the Treasury, to be insufficient to repay the Cost and Charges of erecting such Houses or Buildings, with reasonable Profit and Advantage to the Parties erecting or causing the same to be erected, or to their Representatives or Assigns, in all and every such Case and Cases it shall and may be lawful, at any Time or Times hereafter, to grant any further or other Lease of any such Houses or other Buildings, and Land or Ground respectively, for any Term or Estate, not exceeding the Terms and Estates hereby authorized to be granted; provided that in every such Lease there be reserved and made payable to his Majesty, his Heirs and Successors, such Rent or Rents as is or are hereby required to be reserved, and that Covenants or Conditions be inserted therein, on the Part of the

respective Grantees or Lessees, for erecting such new Houses or other Buildings, and performing such respective Works and Improvements, at the Costs and Charges of such Grantees or Lessees, within a reasonable Time, to be in each Case limited and appointed for that Purpose, where such Houses or other Buildings, or such Works and Improvements, shall not have been previously erected, made, or performed.

No. 55. 34 Geo III c.

VIII. And be it further enacted by the Authority aforesaid, That before the making of any Grant or Lease under the Great Seal, or Seal of the Exchequer, of any Manors, Messuages, Lands, Tenements, Rents, Tithes, Woods, or other Hereditaments now belonging, or hereafter to belong, to his Majesty, his Heirs or Successors, within the Ordering and Survey aforesaid, a Survey of the Premises, where the same shall be capable of such Survey, and an Estimate of the improved Annual Value thereof, shall be had and made by such able and practical Surveyors of Land or of Houses (according to the Nature of the Case) as shall be named for that Purpose, by or under the Order and Direction of the Lord High Treasurer or Commissioners of the Treasury, or of the Surveyor General of the Land Revenues of the Crown for the Time being, which said Surveyors of Land or of Houses shall certify, by their Reports in Writing under their Hands, what in their Judgment is or are the true and fair improved Annual Worth or Value of the respective Estates so by them surveyed and valued, clear of all Taxes, Assessments, and Reprizes whatever; and where the greatest Part of the Value thereof shall consist of the Building or Buildings thereon, or of Ground set apart and appropriated for Building, the said Surveyor or Surveyors shall certify the true and fair Annual Worth or Value of the respective Buildings, Land, or Ground clear of all Contributions for the Expences of building of Party Walls, or repairing the same, and of repairing, and keeping in Repair, the respective Buildings, (as the Case may be,) and also of all Taxes, Assessments, and Reprizes whatever, and also what is or shall then appear to be the true State and Condition of such Buildings, in point of their Repair, Strength, and Durability; and also for what Term of Years it shall appear to him or them to be most beneficial for the Interest of the Crown to grant such Buildings or Ground respectively, Regard being had to the Quality and Condition of the Buildings then standing upon such Ground, and of the Buildings proposed to be erected thereon; and every Person who shall be employed to make Surveys and Estimates, or Valuations, of any such Manors, Messuages, Lands, Tenements, Rents, Tithes, Woods, or other Hereditaments as aforesaid, in consequence of Applications for Grants or Renewals of Leases thereof, shall annex to each Survey and Estimate, or Valuation, an Oath (or, being of the People called *Quakers*, an Affirmation) taken and subscribed by him before a Justice of the Peace in any County, City, or Liberty within this Kingdom, the Tenor whereof shall be as follows:

Before any Grant is made, a Survey of the Premises, and an Estimate of the improved Annual Value, to be made and certified by the Surveyor, &c.

An Oath to be annexed to the Survey

"I A. B. do swear, [or, being a Quaker, do solemly affirm,] That "the Survey or Account hereto annexed was faithfully and impartially made by me; that the Value of the Property of the Crown "therein contained is justly estimated therein, according to the best "of my Skill and Judgment; and that all the Particulars stated in "the said Survey or Account are true, to the Best of my Knowledge "and Belief.

"So help me GOD."

Form of Oath.

Which Oath or Affirmation, so taken and subscribed, shall be filed with the Survey and Estimate in the proper Office for depositing the same.

Oath to be filed

No. 35.: 34 Geo. III. c. 75

Leases of Premises of a fixed Value, &c. may be renewed without Survey.

IX. Provided always, and be it further enacted, That where any Tenements or Hereditaments, of which a Lease or Grant may be applied for, shall happen to be of a known, fixed, and unimprovable Value, or where the Nature of such Tenements or Hereditaments, or the Circumstances relative thereto, the Annual Worth or Value thereof cannot be known or ascertained by the Means of a Survey or Inspection thereof, or where the Value of such Tenements or Hereditaments shall be previously known to be so small or inconsiderable that it shall not be deemed expedient to incur the Expence of taking a Survey thereof, in any such Case it shall and may be lawful to grant or renew a Lease of such Tenements or Hereditaments, without causing a Survey or Estimate to be previously made thereof, if the Lord High Treasurer or Commissioners of the Treasury shall so order and direct.

26 Geo. III. c. 87, and 30 Geo. III. c. 50, recited; and

X. ' And whereas by an Act, made in the Twenty-sixth Year of ' the Reign of his present Majesty, (intituled *An Act for appointing* ' *Commissioners to inquire into the State and Condition of the Woods,* ' *Forests, and Land Revenues belonging to the Crown; and to sell* ' *or alienate Fee-farm and other unimprovable Rents)*; and by another ' Act made in the Thirtieth Year of his present Majesty's Reign, (in- ' tituled, *An Act to continue and amend an Act, made in the Twenty-* ' *sixth Year of the Reign of his present Majesty, intituled,* " *An Act* " *for appointing Commissioners to inquire into the State and Con-* " *dition of the Woods, Forests, and Land Revenues belonging to the* " *Crown; and to sell or alienate Fee Farm and other unimprovable* " *Rents,")* it was (among other Things) enacted, that it should and ' might be lawful for the Commissioners named in, or to be appointed ' under the Authority of the said Acts, to contract and agree with any ' Person or Persons, Bodies Politic or Corporate, for the Sale of any ' Fee Farm Rents, Rents Services, Rents Seck, Quit Rents, Chauntry ' Rents, Guild Rents, Castle Guard Rents, Viscontiel Rents, and ' other dry, fixed, and unimprovable Rents due and payable to his ' Majesty, his Heirs or Successors, within the Survey and Receipt of ' his Majesty's Exchequer, at or for the best Prices or Considerations ' in Money which the said Commissioners should be able to procure, ' not being less than after the several Rates of Purchase therein men- ' tioned: And whereas the Whole of the said Rents were not sold ' or disposed of previous to the Expiration of the said Acts:' Be it therefore enacted by the Authority aforesaid, That, from and after the Tenth Day of *October* One Thousand Seven Hundred and Ninety-four, it shall and may be lawful for the Surveyor General of the Land Revenues of the Crown now or for the Time being, to contract and agree with any Person or Persons, or any Bodies Politic or Corporate, for the Sale of any Fee Farm Rents, Rents Services, Rents Seck, Chauntry Rents, Castle Guard Rents, Viscontiel Rents, and other dry, fixed, and unimprovable Rents, except Quit Rents and Copyhold Rents standing in Charge as Parcel of or belonging to any Manor or reputed Manor, due and payable to his Majesty, his Heirs or Successors, in *England* or in *Wales*, within the Survey and Receipt of his Majesty's Exchequer, at or for the best Prices or Considerations in Money which the said Surveyor General shall be able to procure for the same, and which shall be approved of by the Lord High Treasurer, or Commissioners of the Treasury for the Time being, not being less than the several Rates of Purchase enacted and provided by the said recited Act of the Twenty-sixth Year of the Reign of his present Majesty.

From October 10, 1794, the Surveyor General may contract for the Sale of Fee farm Rents, &c. not disposed of under them.

Bank of England to open an Account for Monies paid.

XI. And for facilitating the Conveyance of the aforesaid Rents to the respective Purchasers thereof, be it further enacted, That the Governor and Directors of the Bank of *England* shall, and they are

No. 35.
34 Geo. III. c. 75.

hereby required to open an Account in their Books, under the Title of *An Account of the Sale of Fee Farm Rents*, and carry to the Credit of such Account the several Monies by this Act directed to be paid to the Cashiers of the Bank, for or on account of the Purchase of any such Rents as aforesaid; and whensoever the said Surveyor General shall have contracted with any Person or Persons, Bodies Politic or Corporate, for the Sale of any Rent or Rents, the said Surveyor General shall grant unto the Purchaser or Purchasers a Certificate under his Hand, specifying the Rent so contracted for, and the Amount of the Purchase Money to be paid for the same; and the said Cashiers of the Bank, or one of them, shall, upon the Production of such Certificate, accept and receive from such Purchaser or Purchasers the Purchase Monies therein specified, and at the Foot or on the Back of such Certificate acknowledge the Receipt of the said Monies, without Fee or Reward; and the said Certificate and Receipt shall be afterwards brought to the Office of the respective Auditor of the Land Revenue, and be there forthwith inrolled, in proper Books to be provided and kept for that Purpose, separate and apart from the other Business and Proceedings of the said respective Offices; and such Auditor having inrolled the said Certificate and Receipt as aforesaid, shall attest the same, under his Hand, and return the said Certificate and Receipt to the Purchaser or Purchasers; and from and immediately after such Inrolment, and thenceforth for ever, the respective Purchasers of such Rents, and their Heirs or Successors, shall by Force of this Act be adjudged, deemed, and taken to be in the actual Seisin and Possession of the Rents so by them respectively purchased, and shall hold and enjoy the same peaceably and quietly, freed and discharged of and from all Claims and Demands which can or may be made by his Majesty, his Heirs or Successors, or by any Person or Persons lawfully claiming by, from or under him or them, and of or from all Manner of Incumbrances whatsoever, heretofore made or charged upon the same Rents and as fully and amply, to all Intents and Purposes, as his Majesty, his Heirs or Successors, might or could have held or enjoyed the same; and shall have and enjoy all and singular the Powers, Remedies, Benefits, and Advantages for the Recovery thereof, given or allowed to the Purchasers of Rents in and by Two Acts of Parliament, made and passed in the Twenty-second and Twenty-third Years of the Reign of his late Majesty King CHARLES the Second, or any other Law or Statute whatsoever, in as large and ample Manner and Form as if such Purchases had been made of, and the said Rents conveyed by, the Trustees or Commissioners appointed or authorized by or under and by Virtue of the same Acts, or either of them.

Surveyor General to grant Certificates of the Money to be paid, which is to be received at the Bank, and Receipts given on the Certificates, which being inrolled with the Auditor of the Land Revenue, shall give Possession.

Certificates to be in the following

XII. And be it further enacted, That the Certificates to be granted by the said Surveyor General, on the Sale of any Rent or Rents as aforesaid, shall be expressed in the Words following, or as near thereto as may be: (that is to say,)

Form.

"By the Surveyor General of his Majesty's Land Revenue.

"THESE are to certify, That the said Surveyor General hath contracted and agreed with *A. B.* for the Sale to him [her, *or* them, *as the Case may be*] of all that Rent of issuing and payable out of [*briefly describing the Lands or Hereditaments chargeable*] now or late payable by at or for the Price or Sum of of lawful Money of *Great Britain*, to be paid by the said *A. B.* into the Bank of *England*, and carried to the Account of the Sale of Fee-farm Rents [*and, in the Case of a subsisting Lease, then the following Words are to be added*] subject nevertheless to a Lease thereof granted under the Great Seal of *Great Britain* [*or*, the Seal of

No. 35. 34 Geo. III. c. 75.

"his Majesty's Exchequer, *as the Case may be*] bearing Date "the Day of One Thousand Seven "Hundred and unto for a Term "of Years which will expire on or about "the Day of and from and immediately after the Payment of the said Sum in Manner aforesaid, "and the Inrolment of this Certificate, and the Receipt for the said "Purchase Money in the Office of the Commissioners for auditing "the Public Accounts of the Kingdom, and thenceforth for ever, "the Purchaser or Purchasers [*as the Case may be*] of the said Rent "[*or* Rents] and his or their Heirs, Successors, or Assigns shall be "adjudged, deemed, and taken to be in the actual Seisin and Posses- "sion of the said Rent [*or* Rents] so by him purchased, by force "and virtue of an Act of Parliament, passed in the Thirty-fourth "Year of the Reign of his Majesty King GEORGE the Third, inti- "tuled, *An Act* [*inserting the Title of this Act.*]

"Given under the Hand of the said Surveyor General, "the Day of "

and witnessed.

Which said Certificates shall be respectively witnessed and attested, as to the Signing thereof, by the said Surveyor General, by one of the principal Clerks, or other Officers in his Office; and that the Receipts to be given or subscribed by the Cashier of the Bank, at the Foot or on the Back of such Certificates respectively as aforesaid, shall be in the Words and Figures following, or as near thereto as may be: (that is to say,)

Receipts of the Bank to be in the following

Form;

"Received the Day of One "Thousand Seven Hundred and of "and from *A. B.* the Sum of of lawful Money "of *Great Britain*, being the Consideration Money expressed in the "above [*or* within] written Certificate.

"Witness my Hand,

"For the Governor and Company of the Bank of *England*,

"(Signed)

" Cashier."

and when inrolled to discharge the Purchasers.

Which said Certificates and Receipts, being inrolled as aforesaid, shall effectually discharge the said Purchasers, or other Persons to whom the same shall be so given and granted, of and from the Purchase and Consideration Money therein respectively expressed, and such Purchasers or other Persons shall never afterwards be liable to, or called upon, sued, troubled, molested, or questioned for or in respect of such Purchase or Consideration Money, or any Part thereof.

Certificates and Receipts to be at the Expence of the Parties.

XIII. And be it further enacted, That the Certificates and Receipts hereby directed to be given shall be made forth and enrolled at the Expence of the Persons entitled to or requiring the same, for which Certificates such Fees shall be paid (exclusive of the Expence of Stamps, Parchment, and inrolling) as the Lord High Treasurer or Commissioners of the Treasury shall direct and establish, in Proportion to the Value of the Rents to be sold, so that no greater Fee be paid for any one Rent than twenty Shillings; and if the Certificate be for more Rents than one, a further Fee shall be paid for every such Rent, not exceeding one fourth of the Fee taken for the highest Rent included in the same Certificate; and the like Fees as aforesaid, and no more, shall be taken for the Inrolment of the said Certificates and Receipts; which said Fees shall be received by and distributed amongst the Officers and Clerks of the said Surveyor General, in such Manner and Proportion as the said Surveyor General shall direct.

Fees to be paid for Certificates; and to be distributed as the Surveyor-General shall direct.

No. 35.
34 Geo. III. c 75.

XIV. And be it further enacted, That where the Consideration Money contracted to be paid for any Purchase or Discharge whatsoever, authorized to be made by this Act, shall exceed the Sum of ten Pounds, the Certificate of the said Surveyor General shall be written on Parchment, stamped or notified with such a Stamp Duty as is required by Law for Common Conveyances of Lands, and no other Stamp shall be requisite for the Cashier's Receipt for such Consideration Money; and where such Consideration Money shall not exceed the Sum of Ten Pounds, the said Certificates shall or may be written on Parchment, without any other Stamp Duty than such as shall by Law be requisite for the Cashier's Receipt; and that in all Cases where the Consideration to be paid for the Purchase of any such Rent or Rents, by the Owners of the Lands, Tenements, or Hereditaments, out of which the same are payable, to any Purchaser or Purchasers of such Rents under this Act, his or their Heirs and Assigns, shall not exceed the Sum of Ten Pounds, the Conveyance thereof shall or may be written on Parchment, without any other Stamp Duty than such as shall by Law be required for the Receipt for the Consideration Money.

Stamp Duty on Certificates, Receipts, &c.

XV. Provided always, and be it further enacted, That if any Person or Persons, with whom the said Surveyor General shall contract for any of the Rents by this Act authorised to be sold, discharged, or extinguished, shall neglect to procure and sue forth the Certificate of the said Surveyor General of his, her, or their Contract, or shall neglect to pay into the Bank the Consideration Money therein to be specified, or shall neglect to inrol such Certificate, and the Cashier's Receipt for the said Money, according to the Direction of this Act, for the Space of Fourteen Days, to be computed from the Day on which such Contract shall have been made, the said Contract shall be null and void, and the Consideration Money, if paid into the Bank, shall be forfeited, unless the said Surveyor General shall, for any reasonable Cause to him shewn for the Omission of such Inrolment, order the said Certificate to be inrolled, *nunc pro tunc*, and which, upon such Cause being shewn, he is hereby authorized to order accordingly.

The Contract of Persons neglecting to procure Certificates, &c. for 14 Days to be void, and the Consideration Money forfeited, unless the Surveyor General shall order Inrolment.

XVI. And be it further enacted, That all and every Sum and Sums of Money which shall be paid into the Bank of *England* under or by virtue of this Act, on account of the Sale of Fee-farm Rents, shall from Time to Time be laid out, by the Order of the said Surveyor General, in the Purchase of three *per Centum* Consolidated Bank Annuities, in the Name of the Lord High Treasurer of *England*, in which Name the Governor and Company of the Bank of *England* are hereby authorized and required to permit Transfers to be made of the Annuities, Funds, or Stock so to be purchased, and such Transfers to be accepted by the said Surveyor General, for and in the Name of the Lord High Treasurer of *England*, and the said Surveyor General is hereby required to accept the same accordingly; and that all and singular the Annuities so to be purchased and accepted shall remain invested in the Lord High Treasurer, or the Commissioners for executing the Office of Lord High Treasurer for the Time being, and shall not be transferred or transferable without the Authority of Parliament; but all the Interests of the said Annuities or Yearly Dividends shall be, from Time to Time, paid by the said Governor and Company into the Hands of such Person or Persons as shall be appointed to receive the same, by Warrant or Power of Attorney, under the Hand and Seal of the Lord High Treasurer, or of the Commissioners of the Treasury for the Time being, and shall, by force and virtue of this Act, be deemed and taken in Law to be Part of the said Land Revenues of the Crown, and shall be from Time to Time answered,

Money paid into the Bank to be laid out in the 3 per Cent Consols, &c.

Annuities not to be transferred without Authority of Parliament, but Interest to be paid by Order of the Treasury and applied as the Land Revenues.

No. 35. 34 Geo. III. c. 75. accounted for, applied, and appropriated to such and the same Uses and Purposes as the Land Revenues of the Crown now are, or would hereafter have been liable to have been applied and appropriated to in case this Act had not been made.

Surveyor General may compound for Arrears of Rent. XVII. And be it further enacted by the Authority aforesaid, That the Surveyor-General of the Crown Lands, now and for the Time being, (the Consent of the Lord High Treasurer or the Commissioners of the Treasury, or any three of them, for the Time being, having been in each Case previously obtained,) shall have the same Power to compound for Arrears of any of the said Rents as was vested in the said Commissioners by the said Acts of the twenty-sixth and thirtieth Years of the Reign of his present Majesty.

27 Geo. III. c and XVIII. 'And whereas, by an Act, made in the twenty-seventh Year of the Reign of his present Majesty, intituled, *An Act for the Sale of certain Houses and Ground belonging to his Majesty*, it was enacted, that it should and might be lawful for the Lord High Treasurer, or the Commissioners of the Treasury for the Time being, to treat, contract, and agree, for the Sale or for the Leasing of all or any Part of the Estate, Right, Title, or Interest in or to all or any of the Houses, Messuages, Tenements, and Ground therein particularly mentioned and specified: And whereas by another Act, made in the thirty-second Year of the Reign of his said Majesty, intituled, *An Act to repeal so much of an Act, made in the twenty-seventh Year of his present Majesty, as relates to the Sale of the House in* Privy Garden, *heretofore used as an Office for the Commissioners of the Lottery, and to enable his Majesty to grant the same*, it was enacted, that so much of the said Act as related to the Sale or Leasing of the said House in *Privy Garden* should be, and the same was thereby repealed: And whereas no Treaty, Contract, or Agreement hath been entered into by the Lords Commissioners of the Treasury for the Sale or Leasing of any of the said Houses, Messuages, Tenements, or Ground, by virtue of the said first-mentioned Act; and it is not expedient that the same should be sold or leased under the said Act:' Be it therefore further enacted, That so much of the said first-mentioned Act as was not repealed by the said Act of the thirty-second Year of his Majesty's Reign shall be, and the same is hereby repealed; and that it shall and may be lawful to and for his Majesty, his Heirs and Successors, from Time to Time, to grant, demise, or assure all or any Part or Parts of the said Premises for such Terms, Estates, and Interests, and under and subject to such Limitations, Reservations, Restrictions, Provisoes, and Conditions as are enacted and provided in and by this Act, in respect of any other Messuages, Tenements, or Ground of the like Nature or Descriptions, belonging to his Majesty.

32 Geo. III. c recited.

So much of first recited Act as was not repealed by the latter, repealed.

Leases may be surrendered, and new ones granted. XIX. 'And whereas it may be expedient to permit the Lessees or Grantees of Lands, Tenements, or Hereditaments, under the Authority of this Act, to alien the Lands, Tenements, or Hereditaments, so demised or granted, in Parcels, and for that Purpose to surrender the subsisting Lease or Grant thereof for the Purpose of obtaining distinct Leases or Grants of such several Parcels, reserving in the Whole the same Rent as shall have been reserved by such surrendered Lease or Grant, or more;' be it enacted, That it shall be lawful for his Majesty, his Heirs and Successors, at any Time, upon Surrender of any subsisting Lease or Grant, to make any new Leases or Grants of the same Lands, Tenements, or Hereditaments in Parcels; provided such new Leases or Grants be for the same Term of Years, and there be reserved thereon in the Whole the same Annual Rent, or more, as was granted and reserved by such surrendered Lease or Grant; and provided also, that such new Leases or Grants shall con-

tain the same Covenants as were contained in such surrendered Lease or Grant, so far as the Subdivision of such Lands, Tenements, or Hereditaments will permit.

Act not to affect the Power of the Chancellor and Council of the Duchy of Lancaster.

XX. Provided always, and it is hereby enacted and declared, That this Act, or any Thing herein contained, shall not extend, or be construed to extend, to any Manors, Messuages, Lands, Tenements, Tithes, or other Hereditaments within the Ordering and Survey of the Chancellor and Council of the Duchy of *Lancaster*, or to any of the Rents or Revenues thereof, or to any Lease or Grant, Leases or Grants, made or to be made under the Seals of the Duchy and County Palatine of *Lancaster*, or either of them; but that all and singular the Manors, Messuages, Lands, Tenements, Tithes, and other Hereditaments of and belonging to the said Duchy, shall and may remain and continue to be granted and demised by his Majesty, his Heirs and Successors, for the like Terms, Estates, and Interests, and the Rents and Revenues thereof, to be received and applied, under the Order and Direction of the Chancellor and Council, and other Officers of the said Duchy, to and for the like Uses and Purposes, and in like Manner and Form, as before the passing of this Act; any Thing herein contained to the contrary notwithstanding.

XXI. [Surveyor-General to certify to the King and the Parliament what Leases have been made, &c.]

XXII. [Surveyor-General may send and receive Letters free of Postage.]

No. 36.

39 & 40 George III. c. 88.—An Act concerning the Disposition of certain Real and Personal Property of his Majesty, his Heirs and Successors; and also of the Real and Personal Property of her Majesty, and of the Queen Consort for the Time being. [28th *July*, 1800.]

P.

39 & 40 Geo III c. 88.

His Majesty, his Heirs and Successors, may by Warrant under the Sign Manual, direct the Execution of any Trusts, to which Lands becoming vested in them by escheat, &c. in Right of the Crown would have been liable in case they had not escheated, &c. and to restore such Lands, or reward the Persons discovering such Escheat, &c.

XII. 'And whereas divers Lands, Tenements, and Hereditaments have become and may hereafter become vested in his Majesty, 'his Heirs and Successors, by Escheat or otherwise, in Right of the 'Crown, which in the Hands of any of his Majesty's Subjects would 'be chargeable with certain Trusts, or applicable to certain Purposes, 'and his Majesty, his Heirs or Successors, may be desirous that the 'same should be applied accordingly, notwithstanding any Right 'which he or they may have to hold the same discharged from such 'Trusts, or without applying the same to such Purposes; but by 'reason of the Provisions contained in the said Acts of the first Year 'of her said late Majesty Queen ANNE, and the thirty-fourth Year of 'his Majesty's Reign, Doubts may be raised whether his Majesty, 'his Heirs or Successors, can direct such Application thereof: And 'whereas divers Lands, Tenements, and Hereditaments, as well Free-'hold as Copyhold, have escheated and may escheat to his Majesty, 'his Heirs or Successors, for Want of Heirs of the Persons last seised 'thereof or entitled thereto, or by Reason of some Forfeiture, or 'otherwise, although not forfeited for Treason or Felony; and it is 'expedient to enable his Majesty to direct the Execution of any such 'Trusts or Purposes as aforesaid, and to make any Grants of any such 'Manors, Lands, Tenements, or Hereditaments as aforesaid, notwith-'standing the Provisions contained in the said recited Acts;' be it enacted, That it shall be lawful for his Majesty, his Heirs and Suc-

No. 36.
39 & 40 Geo. III. c. 88.

cessors, by Warrant under his or their Sign Manual, to direct the Execution of any Trusts or Purposes to which any Manors, Messuages, Lands, Tenements, or Hereditaments, which have escheated or shall escheat to his Majesty, his Heirs or Successors, shall have been liable at the Time the same so escheated respectively, or would have been liable in the Hands of any of his Majesty's Subjects, and to make any Grants of such Manors, Lands, Tenements, and Hereditaments respectively to any Trustee or Trustees, or otherwise, for the Execution of such Trusts, and to make any Grants of any Lands, Tenements, or Hereditaments which have escheated or shall escheat as aforesaid, to any Person or Persons, either for the Purpose of restoring the same to any of the Family of the Person or Persons whose Estates the same had been, or of rewarding any Persons or Person making Discovery of any such Escheat, as to his Majesty, his Heirs or Successors respectively, shall seem fit; any Thing in the said Acts, or any of them, to the contrary notwithstanding.*

* It would be very desirable, that the Principle of this Enactment should be carried further, and that in all Cases where Estates held in Trust, or by way of Mortgage, devolve on the Crown by Escheat, a Grant could be made for the Benefit of the Parties really interested, without the necessity of a previous Inquisition. The Statutes 8 & 18 H. 6, ante, afforded a very salutary Protection against an evident Incroachment of the Crown upon the Rights of the Subject, for the Sake of gratifying particular Favourites; but as the Prerogative is now invariably exercised in Support of the beneficial Interests which would exist, as between Subject and Subject, there is no longer a Necessity for restricting the Exercise of that Prerogative by a Continuance of the Regulations intended as a Guard against Mischiefs, which can no longer be apprehended, and the Compliance with which Regulations is attended with a very heavy and often a very inconvenient Expence. I apprehend, that no Objection could reasonably be made to an Enactment enabling the Crown to make such Grants, upon the Report of the Attorney and Solicitor-General, or of a proper Officer of the Exchequer and other Courts of Revenue; saving to all Persons such Rights at Law, or in Equity, as they would have had against the Heirs of the Persons upon whose Decease the Escheat has taken place.

No. 37.

48 George III. c. 73.—An Act to improve the Land Revenue of the Crown in *England*, and also of his Majesty's Duchy of *Lancaster*. [18th *June*, 1808.]

48 Geo. III. c. 73.
34 Geo. III. c. 75.

'WHEREAS an Act passed in the Thirty-fourth Year of the ' Reign of his present Majesty, intituled, *An Act for the ' better Management of the Land Revenue of the Crown, and for the ' Sale of Fee-farm and other unimproveable Rents*; and it is expedient, ' that further Provisions should be made for the better Management ' of the Land Revenues of the Crown within the ordering and Survey ' of the Exchequer, and of the Duchy of *Lancaster*;' be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same, That where any Land or Ground belonging or hereafter to belong to his Majesty, his Heirs or Successors, within the ordering and Survey aforesaid, shall be deemed by the Lord High Treasurer or Commissioners of the Treasury, or the Chancellor of the Duchy of *Lancaster* for the Time being, fit and proper for Gardens, Yards, Curtilages and other Appurtenances to be used and enjoyed with any

His Majesty may gr[ant] Leases for [99 ye]ars of Lands [as Ga]rdens to be [used w]ith Houses bu[ilt] either on Cr[own] Lands or oth[er].

House or Houses or Buildings erected or to be erected upon Ground belonging either to his Majesty, his Heirs or Successors, or to any other Proprietors, it shall be lawful for his Majesty, his Heirs or Successors, to demise or grant such Land or Ground to any Person or Persons, or to any Bodies Politick or Corporate, under the Great Seal of *Great Britain*, or the Seal of the Exchequer, or the Seal of the Duchy and County Palatine of *Lancaster*. for any Term or Estate not exceeding Ninety-nine Years to be computed from the Date or making of any such Lease or Grant respectively; or if any such Lease or Grant be made to take effect in Reversion or Expectancy, then that the Term and Estate thereby to be granted, together with the Term or Estate, Terms or Estates in Possession of and in the same Lands and Ground shall not exceed Ninety-nine Years, computed from the Date or making thereof as aforesaid. No. 37. 48 Geo. III c. 73.

II. Provided always, and be it further enacted, That no Ground for Garden, Yard, Curtilage or other Appurtenance to be used and enjoyed with any Houses or Buildings holden or to be holden under any Lease from his Majesty or his Royal Predecessors, shall be granted or demised for any Term or Estate exceeding in Duration the Term or Estate for which the Houses or Buildings to which such Land or Ground shall be so attached as Garden, Yard, Curtilage or other Appurtenance shall be holden.

Crown Land not to be granted for longer Time than the Term of the House.

III. And be it further enacted, That from and after the passing of this Act no Lease of any Land or Ground belonging or hereafter to belong to his Majesty, his Heirs or Successors, within the ordering and Survey of the Exchequer in *England*, shall in future be granted for any Life or Lives; any Thing in any former Act of Parliament to the contrary notwithstanding; excepting only such Lease or Leases for Lives, as in and by a certain Act passed in the Forty-fourth Year of his Majesty's Reign, intituled, *An Act for inclosing Lands in the Parish of* Great Staughton *in the County of* Huntingdon, is and are authorized to be granted.

No Lease of Crown Lands shall be granted for Life.

IV. Provided always, and be it further enacted, That it shall be lawful to renew any Leases of such Land or Ground demised or granted under the Authority of this Act, for Garden, Yard, Curtilage and other Appurtenances to be used and enjoyed with any Houses or Buildings, at such Times and upon such Terms, and under and subject to the same Rules, Restrictions, and Provisions, as are prescribed by the said recited Act of the Thirty-fourth Year of his present Majesty or by this Act, for the Renewal of Leases of any Tenements and Hereditaments authorized thereby respectively, to be granted for a Term not exceeding Ninety-nine Years: Provided always, that where any such Land shall be held and used under this Act as a Garden, Yard, Curtilage or other Appurtenance to any Houses or Buildings holden under any Lease from the Crown, it shall be lawful to renew the Lease of such Land at the same Time as the Lease of such Houses and Buildings are renewed, and for the same Term and under the like Conditions.

Crown Leases for Gardens may be renewed, as the Leases for Houses may under 34 G. 3, c. 75. § 5, 6.

V. Provided also, and be it further enacted, That whenever Lands or Grounds, or Part of any Lands or Grounds held under any Lease or Grant from his Majesty or his Royal Predecessors, shall have been or be deemed proper and fit as aforesaid for Gardens, Yards, Curtilages and other Appurtenances as aforesaid, it shall be lawful at any Time during the Continuance of the Demise of any such Lands or Grounds, to renew the Lease or Grant thereof, or of such Part thereof as aforesaid, under such Provisions and Conditions as are hereinbefore prescribed, for the Demise or Grant of any Land or Ground to be used as a Garden, Yard, Curtilage or other Appurtenance.

Leases may be renewed at any Time, as far as relates to Lands deemed proper for Gardens.

No. 37. 48 Geo. III. c. 73

Surveyor General may with Consent of the Treasury, purchase Leases of Crown Lands for the Public Service.

VI. Provided always, and be it further enacted, That it shall be lawful for the said Surveyor General, with the Approbation of and by the Direction of the Lord High Treasurer or Commissioners of the Treasury for the Time being, or any Three of them, to contract and agree with any Body or Bodies Politick or Corporate, or Person or Persons holding any Messuages, Lands, Premises, Tenements, or Hereditaments belonging to the Crown, for the Surrender of any Lease thereof, or to purchase and buy up any Lease, or the Remainder of any Term of any Lease of any Messuages, Lands, Premises, Tenements, or Hereditaments belonging to the Crown, which may be convenient for the public Service, and may, by any Three or more of the Commissioners of the Treasury for the Time being, be deemed eligible to be purchased or bought up, and to pay the Consideration agreed to be paid for such Surrender or Purchase to the Body or Bodies or Person or Persons entitled thereto, out of any Money arising from any Sales heretofore made, and which may be vested in the Bank of *England* in the Three Pounds *per Centum* Consolidated Bank Annuities, or which may hereafter arise from any Sale of any Property belonging to the Crown, under this Act, or the said recited Acts as aforesaid.

Powers of Renewal in renewable Cases where Leases surrendered.

'VII. And whereas by the said recited Act, new Leases to be 'granted upon the Surrender of any subsisting Leases are limited to 'the said Term of Years as was granted by such surrendered Lease; 'and it may be doubtful in Cases wherein a Power is given by the 'said recited Act, to renew any Lease or Grant, whether if the sub'sisting Lease be surrendered the same can be renewed for a longer 'Term than was granted by such surrendered Lease;' be it therefore enacted and declared, That in all Cases in which any Lease or Grant of any Lands, Houses, Tenements, or Hereditaments may be renewed under the said recited Act or this Act, it shall be lawful to make any new Lease or Grant of such Premises upon the Surrender thereof, for such Term and upon the same Conditions as if the same had been renewed under the Provisions of the said recited Act or this Act, and had not been first surrendered.

New Leases shall be paid for by Lessees.

VIII. And be it further enacted, That in all Charges and Expences of any new Lease or Grant made upon the Surrender of any subsisting Lease or Grant under the said recited Act of the Thirty-fourth Year of his present Majesty, shall be borne and defrayed by the Lessees or Grantees thereof respectively.

Chancellor of Duchy and Surveyor General may authorize nunc pro tunc Enrolments, Entries, or Dockets of Leases, &c.

IX. And be it further enacted, That in all Cases where the Enrolment of any Lease or Assignment, or Minute or Dockets thereof before the Auditor of the Land Revenue, or the Auditors of the Duchy of *Lancaster*, or the Entry of any Lease or Assignment, or Minute or Docket of any Lease or Assignment, in the Office of the said Surveyor General, or Auditors of the said Duchy, has been or shall be omitted or delayed beyond the Period limited in any such Lease, it shall be lawful for the Chancellor of the said Duchy of *Lancaster*, or the said Surveyor General, for any reasonable Cause to them or either of them shewn for the Omission or Delay and they and each of them are and is hereby empowered to authorize and permit the making of any such Enrolment or Entry *nunc pro tunc*; and the same respectively when made under such Authority shall be as valid and effectual as if made within the Period limited for that Purpose

38 G. 3, c. 60.

42 G. 3, c. 116, § 131, &c. (for Redemption of Land Tax)

X. 'And whereas by an Act passed in the Thirty-eighth Year of 'his present Majesty, intituled, *An Act for making perpetual subject 'to Redemption and Purchase in the Manner therein stated, the 'several Sums of money now charged in* Great Britain *as a Land Tax 'for One Year, from the Twenty-fifth Day of* March, *One Thousand 'Seven Hundred and Ninety-eight*; and by another Act passed in the 'Forty-second Year of his present Majesty, intituled, *An Act for con-*

'*solidating the Provisions of the several Acts passed for the Redemption and Sale thereof, and for removing Doubts respecting the Right of Persons claiming to vote at Elections for Knights of the Shire and other Members to serve in Parliament, in respect of Messuages, Lands, or Tenements, the Land Tax upon which shall have been redeemed or purchased*; the Chancellor and Council of the Duchy of *Lancaster* for the Time being is empowered to sell and dispose of, and thereupon to grant and assure in the Name of his Majesty, his Heirs and Successors, under the Seal of the said Duchy of *Lancaster*, such and so much of the Manors, Messuages, Lands, Tenements, Tythes, Mines, Minerals, Collieries, Woods, Wood Grounds, Fens, Marshes, or Waste Lands belonging to the Crown, as are within the Survey and Receipt of the said Duchy, as would raise a Sum sufficient for the Redemption of the Land Tax charged on the Revenues belonging to the Crown within the Survey and Receipt of the said Duchy: And whereas it may be expedient, that Power should be continued in the said Chancellor and Council to sell such Portion of the said Revenues as shall be the least productive in proportion to their Value before or after the said Land Tax charged upon the Revenues belonging to the said Duchy shall have been redeemed:' be it therefore enacted, That it shall be lawful for the Chancellor and Council of the said Duchy of *Lancaster* for the Time being, to sell and dispose of to any Person or Persons, Bodies Politick or Corporate, from Time to Time, and thereupon to grant and assure in the Name of his Majesty, his Heirs and Successors, under the Seal of the said Duchy, such Manors or Lordships belonging to the Crown, as are within the Survey and Receipt of the said Duchy, as consist of the Manerial Rights without any Lands, or with very small Quantities of Land belonging to them, and where the greater Part of the Lands over which the Manerial Rights extend is the Property of Individuals, and of Manors or Lands of which his Majesty in Right of his Duchy as aforesaid, is not the sole Proprietor, but is entitled to an undivided Share jointly with Individuals, and intermixed with the Property of Individuals, and lying remote from other Property belonging to the Crown, and of Ground or Building appertaining or antiently held with any Castle or strong Building now or lately used for a Common Gaol, or with any Building used for holding the Assizes or Sessions in any County or District, or for the Court House or Gaoler's House, or in which the Magistrates for any County or District may claim to have Rights from the Length of Use or Enjoyment for the publick Purposes of such County and District, and of Tythes belonging to the Crown, within the Survey of the said Duchy aforesaid, issuing out of Lands, which are the Property of Individuals, and of Mills, Fisheries, Ferries, Tolls, and Stalls of Markets and Fairs, and Wastes belonging to the Crown, within the Survey of the Duchy aforesaid, upon or from which Usurpations or Incroachments have been made by Individuals, for the best Prices or Considerations in Money which the said Chancellor and Council shall be able to procure for the same; and the Purchase Money to be paid for the same shall from Time to Time be paid into the Hands of the Receiver General of the Revenues of the said Duchy, in the like Manner as the Monies arising from the Sale of Lands of the Duchy authorized by the said recited Acts of the Thirty-eighth and Forty-second Years of his present Majesty are directed to be paid; and all Sales made under this Act of the Property herein-before described, shall be made in the same Manner and Form, and under the like Rules, Regulations, and Provisions, and shall be to all Intents and Purposes as valid and effectual as if the same had been made under the said Acts of the Thirty-eighth and Forty-second Years of his present Majesty, or either of them.

No. 37.
43 Geo. III. c. 78.

Chancellor and Council of Duchy of Lancaster empowered to sell certain Lands, under Regulations of recited Acts.

No. 37.

48 Geo. III c. 73.

Land Tax Redemption Acts 38 G. 3, c. 60.

42 G. 3, c. 116, § 131, &c.

XI. 'And whereas by an Act passed in the Thirty-eighth Year of 'his present Majesty, intituled, *An Act for making perpetual, subject 'to Redemption and Purchase in the Manner therein stated, the 'several Sums of Money now charged in* Great Britain *as a Land Tax 'for one Year, from the Twenty-fifth Day of* March *One Thousand 'Seven Hundred and Ninety-eight*; and by another Act passed in the 'Forty-second Year of his said present Majesty, intituled, *An Act for 'consolidating the Provisions of the several Acts passed for the Re-'demption and Sale of the Land Tax into One Act, and for making 'further Provision for the Redemption and Sale thereof, and for 'removing Doubts respecting the Right of Persons claiming to vote 'at Elections for Knights of the Shire and other Members to serve 'in Parliament, in respect of Messuages, Lands, or Tenements, the 'Land Tax upon which shall have been redeemed or purchased*; the 'said Surveyor General of the Land Revenues of the Crown for the 'Time being was empowered to contract for the Sale, from Time to 'Time, of such or so much of the Manors, Messuages, Lands, Tene-'ments, Tythes, Mines, Minerals, Collieries, Woods, Wood Grounds, 'Fens, Marshes, or Waste Lands, belonging to the Crown, within 'the Survey or Receipt of the Exchequer in *England*, as would raise 'a Sum sufficient for the Redemption of the Land Tax charged on the 'Land Revenue belonging to the Crown: And whereas in pursuance 'of the said recited Provision, certain Parts of the Property of the 'Crown which are least productive in proportion to their Value, have 'been selected for the Purpose of being sold, and a large Part thereof 'has actually been sold to great Advantage, and the Augmentation of 'the Land Revenue of the Crown; but a considerable Portion of the 'different Kinds of Property selected for Sale will still remain undis-'posed of, after the necessary Fund for the Redemption of such Land 'Tax shall have been raised; and it is expedient that Power should be 'continued to the Surveyor General to sell the said Portion of Property 'so remaining undisposed of under the said recited Acts, and to make 'further Sales of Property of the like Description;' be it therefore enacted, That it shall be lawful for the said Surveyor General for the Time being, to contract or agree with any Person or Persons, or any Bodies Politick or Corporate, for the Sale from Time to Time of such Manors or Lordships belonging to the Crown as consist of Manerial Rights and Quit Rents, with any Lands or with small Quantities of Land belonging to them; and where the greater Part of the Lands over which the Manerial Rights extend is the Property of Individuals, and of Manors or Lands of which his Majesty is not the sole Proprietor, but is entitled to an undivided Share jointly with Individuals, and of Lands dispersed in small Quantities, and intermixed with the Property of Individuals, and lying remote from other Property belonging to the Crown, and of Grounds or Buildings appertaining to or anciently held with any Castle or strong Building now or lately used for a Common Gaol, or with any Building used for holding the Assizes or Sessions in any County or District, or for a Court House or Gaoler's House, or in which the Magistrates of any County or District may claim to have Rights from Length of Use or Enjoyment for Publick Purposes of such County or District, and of Tythes belonging to the Crown issuing out of Lands which are the Property of Individuals, and of Mills, Fisheries, and Ferries, and Mooring Chains and Wastes belonging to the Crown, the Possession of which has been usurped or encroached upon, for the best Prices or Considerations in Money which the said Surveyor General shall be able to procure for the same, and the Purchase Money to be paid for the same shall from Time to Time be paid into the Bank of *England* to the Account of the Commissioners of his Majesty's Treasury, in like Manner as the

Surveyor General empowered to sell Manors, Quit rents and certain Rights of the Crown under Regulations of recited Acts

Application of the Purchase Money.

No. 37.

48 Geo. III. c. 7

Monies arising from the Sales of Land Revenue authorized by the said recited Acts of the Thirty-eighth and Forty-second Year of his present Majesty are directed to be paid; and all Sales made under this Act of Property herein-before described, shall be made in the same Manner and Form, and under the like Rules, Regulations, and Provisions, and shall be to all Intents and Purposes as valid and effectual as if the same had been made under the said recited Acts of the Thirty-eight and Forty-second Years of his present Majesty, or either of them.

Produce of Sales of Duchy and Crown Lands, &c. shall be invested in three per Cent. Stock applicable as Stock under Land Tax Redemption Acts.
38 & 42 G. 3.

XII. Provided always, and be it further enacted, That it shall be lawful for the said Chancellor and Council of the said Duchy, and the said Surveyor General to order and direct that the Purchase Monies which shall hereafter arise by Sales to be made of Property belonging to his Majesty, his Heirs and Successors, within the ordering snd Survey aforesaid, under the said recited Acts of the Thirty-eighth and Forty-second Years of his present Majesty, or under this Act (excepting only as far as it relates to Enfranchisement of Copyholds and Sales of Manerial Rights respectively), and which shall be paid into the Bank of *England* under the Directions of any of the Three [illegible]-mentioned Acts, shall be laid out in the Purchase either of Three Pounds *per Centum* Consolidated Bank Annuities, or Three Pounds *per Centum* Reduced Annuities, in the Names of the Commissioners of his Majesty's Treasury, or in the Name of the Duchy of *Lancaster*, in like Manner in all Respects as is prescribed in the said recited Acts of the Thirty-eighth and Forty-second Years of his present Majesty, with relation to Purchases of Three Pounds *per Centum* Consolidated Bank Annuities under those recited Acts respectively, and the Capital Stock purchased under the Provisions of this Act, whether Three *per Centum* Consolidated Bank Annuities, or Three *per Centum* Reduced Annuities, and the Interest or Dividends arising therefrom, shall be subject to be disposed of and applied in the same Manner, to the same Purposes, and under the same Rules, Regulations, and Provisions, as are prescribed in the said recited Acts of the Thirty-eighth and Forty-second Years of his present Majesty, with respect to Stock purchased by Sales of any of the said Land Revenues authorized by the said last-mentioned Acts, and with respect to the Dividends and yearly Interest arising therefrom.

Surveyor General empowered to contract for the Enfranchisement of Copyholds, and Sale of Manerial Rights belonging to Manors of the Crown,

XIII. And be it further enacted, That it shall be lawful for the said Surveyor General for the Time being, to contract and agree with any Person or Persons, or Body or Bodies Politick or Corporate, being Tenant or Tenants of any Copyhold or Customary Tenements, Parcel of or holden of any Manor belonging to the Crown, within the Survey or Receipt of the Exchequer in *England*, for the Enfranchisement of any such Copyhold Tenements, or with any Person or Persons (though not such Tenants of any such Copyhold Tenements) for the Sale of the Manerial Rights belonging to the Crown therein, at or for the best Prices or Considerations in Money which the said Surveyor General shall or may be able to procure for the same, and which shall be approved of by the Lord High Treasurer or Commissioners of the Treasury for the Time being, and the Tenements so agreed to be enfranchised, or upon which the Manerial Rights shall have been so contracted for, and the Consideration to be paid for the same, shall be specified in a Certificate to be granted for that Purpose, and the Consideration Monies so to be paid shall be accepted, and Receipt given for the same, and the said Certificate and Receipt shall be enrolled, and the Enrolment thereof shall be attested in the same Form and Manner, and under the same Rules, Regulations, and Provisions respectively (except where it is otherwise provided by this Act) as are contained in the said recited Act of the Thirty-fourth Year of his

under Regulations of Act of 34 G. 3, c. 75, § 11, &c. and this Act.

No 37. 18 Geo III. c. 73.

present Majesty, with relation to the Conveyance of Fee Farm Rents to the Purchasers thereof under that Act; and such Certificate and Receipt shall also, in the Court Rolls of the Manor under which the Tenement to which the same relates is holden, be enrolled by the Steward of such Manor or his lawful Deputy, who is hereby required forthwith to enrol such Certificate and Receipt upon the Production thereof to him, and having enrolled the said Certificate and Receipt as aforesaid, shall attest the same under his Hand, and return the said Certificate and Receipt to the Purchaser or Purchasers; and from and immediately after such Enrolments, and thenceforth for ever, the respective Copyhold Tenements included in any such Certificate, relating to the Enfranchisement thereof, shall be enfranchised, and the Tenants thereof respectively shall hold the same freed and discharged of and from all Claims and Demands which can or may be made by his Majesty, his Heirs or Successors, or by any Person or Persons lawfully claiming by, from, or under them, as Lords of the Manor to which such Tenements before the Enfranchisement thereof belonged, and as fully and amply to all Intents and Purposes as his Majesty, his Heirs or Successors, might or could have held or enjoyed the same; and from and immediately after such Enrolments and thenceforth for ever, the respective Purchases of any Manerial Rights mentioned in any such Certificate, relating to the Purchase thereof, and their Heirs and Assigns, shall by force of this Act be adjudged, deemed, and taken to be in the actual Seisin and Possession of the Manerial Rights so by them respectively purchased, and shall hold and enjoy the same peaceably and quietly, freed and discharged from all Claims and Demands of his Majesty, his Heirs and Successors, or any Person claiming under him or them, as fully and amply to all Intents and Purposes as his Majesty, his Heirs and Successors, might or could have held or enjoyed the same if such Sale had not taken place.

Consent of the Treasury required.

XIV. Provided always, and be it further enacted, That no such Contract shall be made unless by special Warrant, to be issued for that Purpose by the Lord High Treasurer or the Commissioners of the Treasury for the Time being, or any Three of them.

Produce of such Enfranchisements, &c. shall be invested in three per Cents. as under 34 G 3, c 75, § 16, and a separate Account kept.

XV. And be it further enacted, That the Purchase Money or Consideration to be paid for every such Enfranchisement or Purchase of Manerial Rights, shall from Time to Time be paid into the Bank of *England*, to the Account of the Lord High Treasurer of *England*, for the Enfranchisement of Copyholds of Crown Manors, and shall be laid out in the Purchase of Three Pounds *per Centum* Consolidated Bank Annuities, in the Name of the Lord High Treasurer, by order of the said Surveyor General (who is for that Purpose hereby authorized to make Drafts on the Bank for the same) in like Manner as is directed by the said recited Act passed in the Thirty-fourth Year of the Reign of his present Majesty intituled, *An Act for the better Management of the Land Revenue of the Crown, and for the Sale of Fee Farm and other unimproveable Rents*; but nevertheless in such Manner that the Accounts may be kept separate and distinct from the Accounts of the Sales made and Stock purchased in pursuance of the said Act.

Certificate shall be given by the Surveyor General to Purchasers, &c. on Production whereof, and Payment of the Money, Bank shall give Receipts.

XVI. And be it further enacted, That whenever the said Surveyor General shall have contracted with any Person or Persons, Body or Bodies Politick or Corporate, for the Enfranchisement of any such Tenements or other Hereditaments, or Sale of the Manerial Rights therein, the said Surveyor General shall grant to the respective Purchaser or Purchasers a Certificate under his Hand, specifying the Premises so agreed to be enfranchised or sold, and the Amount of

the Purchase Money to be paid for the same, and which is hereby required to be paid within Thirty Days from the Date of such Certificate, and the Cashiers of the Bank, or One of them, shall, upon the Production of such Certificate, accept and receive the Purchase Monies therein specified, and at the Foot or on the Back of such Certificate acknowledge the Receipt of the same, without Fee or Reward; which Certificates and Receipts shall be in the Form of Words following, or as near thereto as may be; (that is to say) No. 37. 48 Geo. III. c. 73.

'By the Surveyor General of his Majesty's Land Revenue.

'THESE are to certify, That the said Surveyor General hath contracted and agreed on Behalf of the King's most Excellent Majesty, with of ' for the [Enfranchisement of] *or* '[Sale of the Manerial Rights belonging to the Crown, in and 'upon] the Copyhold or Customary Tenements herein-after mentioned, holden by the said by Copy of Court 'Roll of his Majesty's Manor of in the 'County of (that is to say) All that [*here insert the Description of the Premises*] at or for the Price or Sum 'of to be paid by the said 'into the Bank of *England*, and carried to the Account of the High 'Treasurer of *England* for Enfranchisement of Copyholds of Crown 'Manors [*where there is a subsisting Lease of the Manor to insert*] 'subject nevertheless [*reciting the Lease*] and from and immediately 'after Payment of the said Sum in Manner aforesaid, and the Enrolment of this Certificate, and the Receipt for the said Sum in the 'Office of the Auditor of his Majesty's Land Revenue for the County 'aforesaid, and in the Court Rolls of the said Manor, and thenceforth for ever the said and his Heirs 'and Assigns, shall hold and enjoy the said [Premises as Freehold in 'Fee and Common Socage, freed and discharged of and from all Fines, 'Heriots, Reliefs, Quit-Rents, and other Customary Dues and Payments, Suits and Services whatsoever] *or* [Manerial Rights, in as 'full and ample a Manner to all Intents and Purposes as his Majesty, 'his Heirs and Successors, could or might have held and enjoyed the 'same] by virtue of an Act of Parliament, passed in the Forty-eighth 'Year of the Reign of his Majesty King GEORGE the Third, intituled, '*An Act* [*here insert the Title of this Act*]. Given under the Hand 'of the said Surveyor General, this Day of

Form of Certificate.

'Witness to the signing by the
'said Surveyor General,

'RECEIVED the Day of of 'and from the above-named the Sum of 'of lawful Money of *Great Britain*, being the Consideration Money 'expressed in the above written Certificate.

Form of Receipt by the Bank.

'Witness my Hand,
'For the Governor and Company of the Bank of *England*.
Cashier.'

£.

Which Certificates and Receipts shall not be chargeable with any other Stamp Duty than such as is by Law required for the Receipts for the respective Sums therein expressed to be paid as the Consideration for such Enfranchisements, or for such Manerial Rights; and such Certificates and Receipts shall be good, sufficient, valid and

Such Certificate and Receipt (with Receipt Stamp thereon) a sufficient Conveyance.

No. 37. 48 Geo. III. c. 73

effectual in the Law for conveying and assuring the several Messuages, Tenements, and Hereditaments therein respectively to be comprized, enfranchised, and discharged, and the said Manerial Rights therein specified, unto and to the Use of the several and respective Persons therein to be named, and their Heirs and Assigns for ever.

Provisions of 34 G. 3. c. 75 extended to this Act

XVII. And be it further enacted, That all Rules, Regulations, Provisions, Clauses, Matters, and Things contained in the said recited Act of the Thirty-fourth Year of his present Majesty, and in force before the passing of this Act, with respect to the Sale of Fee Farm Rents, and the Certificates and Receipts relating thereto, authorized by that Act, shall be in force and be applied as far as the same are applicable, and are not altered by this Act with relation to the Enfranchisement of Copyholds, and Sales of Manerial Rights, and to the Certificates and Receipts concerning the same, authorized by this Act.

26 G. 3, c. 87. 30 G. 3, c. 50. 34 G. 3, c. 75.

XVIII. 'And whereas great Uncertainty prevails as to what 'Stamp Duties ought by Law to be imposed upon Contracts 'for the Sale of Fee Farm Rents under an Act made in the 'Twenty-sixth Year of his present Majesty, intituled, *An Act for appointing Commissioners to inquire into the State and Condition of the Woods, Forests, and Land Revenues belonging to the Crown, and to sell or alienate Fee Farm and other unimprovable Rents*; 'and under another Act made in the Thirtieth year of his present 'Majesty, intituled, *An Act to continue and amend an Act made in in the Twenty-sixth Year of the Reign of his present Majesty, intituled, An Act for appointing Commissioners to inquire into the State and Condition of the Woods, Forests, and Land Revenues belonging to the Crown, and to sell or alienate Fee Farm and other unimproveable Rents*, and under the said recited Act of the Thirty-fourth Year 'aforesaid, and also upon Leases granted by the Crown under the said 'recited Act of the Thirty-fourth Year aforesaid, to the great Grievance 'and Hardship of Purchasers of such Fee Farm Rents and Lessees of the 'Crown respectively;' Be it enacted, That no Contracts made under any of the said recited Acts of the Twenty-sixth, Thirtieth, or Thirty-fourth Years of his present Majesty, for the Sale of Fee Farm Rents, nor any Leases made under the Great Seal or Seal of the Exchequer, of any Lands or other Hereditaments belonging to the Crown, within the ordering and Survey of the Exchequer, since the recited Act of the Thirty-fourth Year aforesaid, shall be null and void on account of the same respectively not being duly stamped, or the Stamp Duty not having been duly paid thereon respectively, and that no Contract which shall be hereafter made for the Enfranchisement of any Copyhold, or for the Sale of any Manerial Rights under this Act, or the Sale of any Fee Farm Rents or other Hereditaments belonging to the Crown, within the ordering and Survey of the Exchequer aforesaid, nor any Lease or Grant which shall be made pursuant to the Regulations of this Act or of the said Act of the Thirty-fourth Year of his present Majesty's Reign, which shall be hereafter made of any Lands or other Hereditaments belonging to the Crown, within the ordering and Survey last aforesaid, shall be subject to any Stamp Duty whatever.

No former Contracts and Leases said Acts shall be void for Want of proper Stamps; future Contracts and Leases shall be exempt from Stamp Duties.

34 G. 3, c. 75, s. 5.

XIX. 'And whereas by the said recited Act of the Thirty-fourth 'Year of his present Majesty, it is amongst other Things enacted, 'That it shall not be lawful to renew any Grant or Lease of any Tene-'ments or Hereditaments authorized by the said Act to be granted for 'any Term not exceeding Ninety-nine Years, until within Twenty 'Years of the Period of the Expiration of the same, except in certain 'Cases therein specified; And whereas it is expedient that a Power of 'Renewal should be allowed in other Cases not specified in the said 'Exception;' be it therefore enacted, That where any House or other

No. 37.

48 Geo III. c 73

Building shall require or shall be intended and agreed to be rebuilt, or any new House or other Building to be erected upon any Land or Ground belonging to the Crown, within the ordering and Survey aforesaid, held under a Lease from the Crown, upon which other Houses or Buildings included in the same Lease are standing, if the Lessee or Grantee shall covenant and agree to build a new House or Building, or to rebuild a House or Building of such Value as to increase the Value of the whole Property included in such Lease, it shall be lawful at any Time or Times hereafter to grant any further or other Lease of all such Land or Ground, with the Houses and Buildings thereupon, as were included in the former Lease, for any Term or Estate (except for Life or Lives) not exceeding the Terms and Estates authorized by the said recited Act of the Thirty-fourth Year aforesaid, to be granted; provided that in every such Lease there be reserved and made payable to his Majesty, his Heirs and Successors, such Rent as is by the said last mentioned Act or this Act required to be reserved, and that Covenants or Conditions be inserted therein on the Part of the respective Grantees or Lessees for erecting such new Houses or Buildings, or rebuilding such Houses or Buildings, within a reasonable Time, to be in such Case limited and appointed for that Purpose, and that such respective Improvements shall be of the requisite Value.

Where Houses of increased Value are agreed to be built on Crown Land under Lease, with Houses thereon, new Leases of the whole may be granted to any Term under said Act (except for Life.)

XX. And be it further enacted, That where any new Edifice or Building shall be erected or agreed to be erected on Ground belonging to the Crown, within the ordering and Survey of the Chancellor and Council of the Duchy of *Lancaster*, or of the said Surveyor General aforesaid, or held under any Lease from the Crown, for the Enlargement of, and to be united to and occupied with any House or other Building held under any other Lease from the Crown, it shall be lawful to grant a new Lease or Leases for any Term not exceeding Ninety-nine Years, as well of the Ground on which such new Edifice or Building shall be erected or agreed to be erected, as of all or any Part of any other Tenements or Hereditaments contained in such Leases; provided that the greater Part of the yearly Value of the Tenements and Hereditaments so to be granted shall consist of the Buildings thereon, or of Ground set apart and appropriated for building, or for necessary Gardens, Yards, Curtilages, or other Appurtenances as aforesaid.

Where new Buildings are agreed to be erected on Duchy Land or Crown Land for Enlargement of existing Houses, &c under any Crown Lease, new Leases may be granted of the Whole.

XXI. 'And whereas the Restrictions contained in the said recited Act of the Thirty-fourth Year of his present Majesty, as it now stands, may be found inconvenient in respect to the granting of Leases of some Kinds of Property now held under Lease from the Crown, and which are of a fluctuating and uncertain Value;' be it therefore enacted, That it shall be lawful for the Lords Commissioners of the Treasury to grant and renew Leases of the Profits of Agistment of Forests disafforested, the Profits of Præ and Post Fines arising within the Principality of *Wales* and the County Palatine of *Chester*, those of Lighthouses on Beacons, and of Chains for mooring Ships, Tolls, Markets and Fairs, Tythes, Fisheries, Ferries, and other Articles of uncertain Produce, for such Term of Years not exceeding Thirty-one Years, and for such Fine or Fines, and under such Rent or other Reservations and Conditions as they shall from Time to Time think reasonable and expedient.

Treasury may grant and renew Leases of Property uncertain in its Produce for 31 Years, at their Discretion.

XXII. 'And whereas in the said recited Act of the Thirty-fourth Year of his present Majesty it was enacted and declared, That where any Wastes, Commons, or other uninclosed Lands or Grounds within the ordering and Survey aforesaid, in which his Majesty, his Heirs and Successors, has or shall have any Interest, shall be deemed fit and proper to be divided, inclosed, drained, or otherwise improved,

No. 37. 48 Geo. III. c. 73.

'and shall be by Authority of Parliament or otherwise authorized and 'directed to be divided and inclosed, and where the Term or Estate 'in Possession of and in the same respectively shall be deemed by the 'Lord High Treasurer or Commissioners of the Treasury to be insufficient to defray the Costs and Charges of such Works and Improvements, with reasonable Profit and Advantage to the Parties making 'or causing the same to be made, or to their Representatives or Assigns, in all and every such Case and Cases it shall be lawful to 'renew any such Lease, or to grant any further or other Lease of any 'such Lands or Grounds, or any Part thereof, for any Term or Estate 'not exceeding the Terms or Estates authorized to be granted of 'Lands, Tenements, or Hereditaments of such or the like Descriptions, by the Act of the First Year of Queen ANNE therein mentioned, or by the said recited Act of the Thirty-fourth Year of his 'present Majesty aforesaid: And whereas it is expedient that such 'Power of Renewal should be extended to any other Lands comprised 'in the same Lease with such Wastes or other uninclosed Lands;' be it therefore further enacted, That whenever any Lease shall be renewed under the said recited Provision, with respect to any such Wastes, Commons, or other uninclosed Lands or Grounds, it shall be lawful to renew the same in like Manner and upon the same Terms with respect to any other Lands or Grounds comprized in the same Lease, with such Wastes, Commons, or uninclosed Lands or Grounds.

Power of 34 G. 3, c. 75, § 7, to renew Leases of Wastes extended to any other Lands comprized in the same Lease.

XXIII. 'And whereas by the said recited Act of the Thirty-'fourth Year aforesaid, certain Rules are laid down for the Reservation of Rent, in Cases where there are substantial Buildings upon 'Ground to be demised, or the Buildings thereupon shall not require 'or be intended or agreed to be rebuilt, and also in Cases where there 'are no substantial Buildings upon the Grounds to be demised, or the 'Buildings thereupon require, or shall be intended and agreed to be 'rebuilt, or other new Buildings erected upon such Land or Ground; 'but no Rule is laid down for Cases where upon the Ground to be 'demised there is some substantial Building not required or intended 'or agreed to be rebuilt, and either some other Building required or 'intended or agreed to be rebuilt, or some new Building is proposed 'to be erected thereon;' be it therefore enacted, That in all Cases where upon the Ground to be demised there is some substantial Building not required or intended or agreed to be rebuilt, and either some other Building thereon requiring or intended or agreed to be rebuilt, or some new Building is intended or agreed to be erected thereon, it shall be lawful for the Lord High Treasurer or Commissioners of the Treasury to direct what Rent shall be reserved and paid annually, and whether any and what Fine shall be taken upon such Demise, regard being had to the Value of the Buildings on the Ground to be demised not intended to be rebuilt, and the Proportion it bears to the Value of the whole Property intended to be demised.

34 G. 3, c. 75, § 3.

Treasury shall ascertain Rent, &c. where Houses are to be rebuilt or newly erected on demised Land, whereon are other Houses not intended to be rebuilt.

XXIV. Provided always, and be it further enacted, That it shall be lawful for the Lord High Treasurer or Commissioners of the Treasury, when they shall be of Opinion that the Solidity and Value of any old House or Houses to be demised not required or intended to be rebuilt, is such as to be sufficient Security for the due Payment of the whole Annual Sum deemed by them to be a reasonable Consideration for such Building or Buildings and Ground held therewith respectively, for the Term and Estate to be granted by and in the same, to direct that the Whole of such Consideration shall be reserved and taken in Rent only, without taking any Fine for the same.

Treasury may reserve Rent only, without Fine where old Buildings are substantial.

XXV. 'And whereas it is necessary to vest a discretionary 'Power in the Lord High Treasurer or Commissioners of the Treasury, 'to determine the Rent upon Leases of Lands, Tenements, and Here-

No. 37.
18 Geo III. c. 75.

' ditaments belonging to the Crown, within the ordering and Survey ' aforesaid, in certain Cases not provided for by Law;' be it therefore enacted, That for and in respect of any Lease or Grant under the Great Seal, or the Seal of the Exchequer, of any Houses or other Buildings which shall be certified by Surveyors not to require rebuilding, and which shall be of greater yearly Value than the Ground on which they are built, but which a Lessee may desire to pull down in order to erect other Houses or Buildings of greater Value for his own Accommodation or Advantage, of Houses or other Buildings which may have been damaged or destroyed by Fire, or Ground on which such Buildings have been erected, and also of Houses or other Buildings which shall be only in part rebuilt, or to which new Buildings shall be added, and also of Ground to be granted as Gardens, Yards, or Curtilages to Houses already erected or to be erected, whether on Ground belonging to his Majesty, or to any other Proprietor, it shall be lawful for the Lord High Treasurer, or the Lords Commissioners of his Majesty's Treasury at their Discretion, to admit of the Consideration being paid, either in Rent only or in Rent and Fine; provided always, that where a Fine shall be taken it shall not exceed the Proportion of One Third Part of the net annual Value of the Premises, in respect of which the same shall be paid, nor computed at a higher Rate than the highest legal Interest.

Discretionary Power in Treasury to ascertain Consideration, either in Rent only, or partly in Rent and partly in Fine, in certain Cases.

XXVI. ' And whereas the most usual Mode of Reservation in ' Leases of Mines, Collieries, Quarries, and other Mineral and Fossil ' Substances, and that which is best adapted to this Kind of Property, ' is a certain Share of the Ore or other Produce in Kind, or a Rent ' or Duty in Money payable on the Quantity raised;' be it therefore enacted, That it shall be lawful in Leases under the Great Seal, or the Seal of the Exchequer, of Mines, Collieries, Quarries, and other Mineral and Fossil Substances belonging to his Majesty, within the ordering and Survey aforesaid, instead of any other annual Rent, to receive such Share of the Produce in Kind, or such Rent or Duty upon the Quantity or Value of such Produce, as the Lords Commissioners of the Treasury, or any Three or more of them, shall think proper.

In Lease of Mines, &c Treasury may reserve as Rent a Part of the Produce, or a Duty upon the Value thereof.

XXVII. ' And whereas his Majesty, in Right of his Crown, is ' Owner of the Soil of the *Great Forest* of *Brecknock* in the County ' of *Brecknock*, and of the Mines, Minerals, and other Substances ' within and under the same, and is also entitled to the Herbage ' thereof, subject to the Depasturage of Cattle of Occupiers of certain ' Lands within and adjacent to the said Forest, at annual, fixed, and ' customary Payments: And whereas by reason of such Depasturage ' of Cattle, and the Nature and Extent of the said Forest, and of the ' Soil, the Rights and Interests of his Majesty therein cannot be made ' productive in their present State, and it is therefore expedient that ' Power should be given to dispose of the same;' be it therefore enacted, That it shall be lawful for the said Surveyor General for the Time being, to contract and agree with any Person or Persons, or any Bodies Politick or Corporate, for the Sale of the Soil, Mines, or other Minerals, or other Substances or Herbage, or any other Rights or Interests of his Majesty, his Heirs and Successors, in the said Forest or any Part thereof, or in any Manner appertaining thereto or existing within the same, within the ordering and Survey aforesaid, at or for the best Prices or Considerations in Money which the said Surveyor General shall be able to procure for the same, and which shall be approved of by the Lord High Treasurer or Commissioners of the Treasury for the Time being; and the Purchase Monies to be paid for the same shall from Time to Time be paid into the Bank of *England* to the same Account, and shall be invested in the Purchase of Stock

Rights and Interests of the Crown in the Forest of Brecknock may be sold by Surveyor General with Approbation of the Treasury under the Regulation of this Act as to Sale of Crown Lands.

No. 37.
18 Geo. III. c. 73.

of the same Denominations, and the Stock so purchased, and the Interest and yearly Dividend arising therefrom, shall be applied in the Manner, and subject to the same Regulations as are herein-before prescribed with respect to the Purchase Monies arising from the Sales of Crown Lands herein-before authorized; and such Sales of any such Rights and Interests in the said Forest shall be made in the same Manner and under the same Regulations, and the Certificates and Receipts to be given shall be in the same Form *mutatis mutandis* as are herein-before directed with respect to the Sales of Crown Lands; and from and immediately after the Enrolment of the said Certificate and Receipt in the Office of the Auditor of the Land Revenue; and thence forth for ever the respective Purchasers, their Heirs, Successors, and Assigns, shall be adjudged, deemed, and taken to be in the actual Seisin and Possession of the Premises so by them respectively purchased, and shall hold the same peaceably and quietly, freed and discharged of and from all Claims and Demands which can or may be made by his Majesty, his Heirs or Successors, or by any Person or Persons lawfully claiming by Him or under Him or Them, and of and from all Manner of Incumbrances whatsoever, as fully and amply to all Intents and Purposes as his Majesty, his Heirs and Successors, might or could have held or enjoyed the same.

Chancellor, &c. of Duchy, and Surveyor General with Consent of the Treasury, empowered to exchange Lands of the Crown for Lands of Individuals.

XXVIII. And be it further enacted, That whenever it shall appear to the said Chancellor and Council of the said Duchy, or to the said Surveyor General, that it would be for the Advantage of the Land Revenue of the Crown to exchange any Parcel or Parcels of Land belonging to his Majesty, his Heirs and Successors, for any other Parcel or Parcels of Land of equal or nearly equal Value, belonging to any other Person or Persons, Bodies Politick or Corporate, and such other Person or Persons or Bodies shall consent to such Exchange, it shall be lawful for the Surveyor General of the said Duchy and the said Surveyor General to cause the Value as well of the said Parcel or Parcels of Land belonging to his Majesty, his Heirs or Successors, as of the said Parcel or Parcels of Land proposed to be exchanged for such Land of his Majesty, to be ascertained by some able and practical Surveyor of Land, who shall annex to his Survey, Estimate, or Valuation thereof, when completed, an Oath (or being of the People called *Quakers*, an Affirmation) taken and subscribed by him before any Justice of the Peace or Magistrate of the United Kingdom, who is respectively hereby authorized to administer an Oath or Affirmation in that Behalf, the Tenor whereof shall be as follows; that is to say,

'I *A. B.* do swear [*or*, being a Quaker, do solemnly affirm] That 'the Survey or Account hereto annexed, was faithfully and im- 'partially made by me; that the Value of the Property of the Crown, 'and of *C. D.* therein contained, is justly estimated therein, according 'to the best of my Skill and Judgment; and that all the Particulars 'stated in the said Survey or Account are true to the best of my 'Knowledge and Belief.'

Which Oath and Affirmation so taken and subscribed, shall be filed with the Survey and Estimate in the Office of the said Surveyor General, or of the Clerk of the Council of the said Duchy, and the said Surveyor General shall report to the Lord High Treasurer or the Commissioners of the Treasury, or the said Surveyor General of the said Duchy shall report to the Chancellor and Council of the said Duchy the Grounds of his Recommendation of the proposed Exchange, together with the said Valuation of the respective Parcels of Lands; and if the Lord High Treasurer or the Commissioners of the Treasury, or the Chancellor and Council of the said Duchy, shall, upon due

Consideration had, approve of such Exchange taking place, they shall authorize the said Surveyor General, or the proper Officers of the said Duchy, to carry the same into effect, upon such Terms and Conditions as they shall think fit, provided the same shall be assented to by the Person or Persons, or Body with whom such Exchange is proposed to be made; and the said Chancellor and Council, and the said Surveyor General shall thereupon cause the said Parcel or Parcels of Land belonging to his Majesty, to be conveyed to the said Person or Persons, or Bodies respectively with whom the said Exchange is proposed to be made, and such Person or Persons, or Body, shall at the same Time convey to the said Chancellor or Council, or to the said Surveyor General, in Trust for and on the Behalf of his said Majesty, his Heirs and Successors, in Right of his Crown, or in Right of his Duchy, the said Parcel or Parcels of Land so agreed to be given in Exchange for such Parcel or Parcels of Crown Land as aforesaid; and from and immediately after the Completion of such Exchange, the said Parcels of Land so belonging to his Majesty, and given in Exchange as aforesaid, shall vest in the Person or Persons, or Body, to whom the same is conveyed, for the same Estate or Interest, and as fully and effectually as the said Parcel of Land so given in Exchange did before such Exchange; and the said Parcels of Land so conveyed in Exchange to his Majesty, shall vest in his Majesty, his Heirs and Successors, in Right of his Crown, or in Right of his Duchy, as fully and effectually, and be subject to the same Application as the said Parcels of Land so conveyed in Exchange to such Person or Persons, or Body, was vested in him before such Exchange.

No. 37. 48 Geo. III. c. 73.

XXIX. Provided always, and be it further enacted, That it shall be lawful for the Lords Commissioners of the Treasury, or the Chancellor of the said Duchy, if they shall think fit, to direct the Payment or Acceptance on Behalf of his Majesty of such Sum of Money, for equalizing any such Exchange, as shall be agreed upon between the Chancellor and Council, or the said Surveyor General and the said Person or Persons or Bodies with whom such Exchange is proposed to be made, and where any such Money is to be paid to any such Person or Persons or Body for such Purpose, such Money shall be paid out of the Land Revenue of the Crown, or out of the Revenues of the said Duchy; and where any Money shall be paid to his Majesty for equalizing such Exchange, the same, if it shall amount to the Sum of Fifty Pounds, shall be vested in the Three Pounds *per Centum* Consolidated Bank Annuities, in the Name of the Lord High Treasurer, and the Dividends thereof shall be applicable as Land Revenue; and if it shall not amount to the Sum of Fifty Pounds, the same shall be appropriated as Land Revenue under the Direction of the Lords Commissioners of the Treasury; or in case of the Money being paid to his Majesty in Right of his said Duchy, the same shall be placed in Three *per Centum* Consolidated Bank Annuities in the Name of the Duchy of *Lancaster*, according to the Directions of the said recited Acts of the Thirty-eighth and Forty-second Years of his present Majesty.

Treasurer, &c. may pay or accept Money for equalizing Exchange.

Application of Money received.

38 G. 3, c. 60. 42 G. 3, c. 116.

XXX. And be it further enacted, That it shall be lawful to the Chancellor and Council of the said Duchy, or to the said Surveyor General for the Time being, to act for and on Behalf of his Majesty, as well in making as accepting the Conveyances of Parcels of Land so intended to be exchanged as aforesaid; and the Conveyances of the Land within the ordering and Survey of the Exchequer aforesaid, so proposed to be given in Exchange by his said Majesty, may be in the following Form, or as near thereto as may be; (that is to say),

Form of Conveyances of Lands exchanged.

'THESE are to witness, That in Consideration of the Conveyance
'of certain Lands [*describing them*] to his said Majesty, in

From the Crown.

No 37.
48 Geo III. c. 73

'Right of his Crown, from *C. D.* [and also in Consideration of the 'Sum of paid by the said *C. D.* for Equality of Exchange to the Surveyor General of the Land Revenue of the Crown] the said Surveyor General for and on Behalf of his Majesty, doth by these Presents grant, bargain, and sell unto the said *C. D.* his Heirs and Assigns, All [*describe the Parcels of Land, &c sold*] To have and to hold the said [Parcels, &c.] hereby bargained and sold, and all Benefit and Advantage thereto belonging, unto and to the Use of the said *C. D.* his Heirs and Assigns, for ever. In Witness whereof the same Surveyor General hath hereunto set his Hand and Seal, this Day of , in the Year of our Lord

'Witness to the Execution by the said Surveyor General

And the Conveyance to his Majesty of such Lands as are proposed to be taken in Exchange for such Crown Lands, may be in the following Form, or as near thereto as may be; (that is to say),

'Conveyance by the Person with whom the Exchange is proposed to be made:

Form of Conveyance from the Party

'THESE are to witness, That *C. D.* of in the 'County of in Consideration of the Conveyance 'to him the said *C. D.* from the Surveyor General of the Land Re'venue of the Crown, for and on Behalf of his Majesty, of a certain 'Parcel of Land [*describing it*] and also the Sum of 'paid to him by the said Surveyor General on Behalf of his said 'Majesty, for Equality of Exchange [*if the Case be so*] Doth by 'these Presents grant, bargain, and sell unto his Majesty, his Heirs 'and Successors, all that Parcel of Land [*describing it*] To have and 'to hold the same to his said Majesty, his Heirs and Successors, in 'Right of his Crown. In Witness whereof the said *C. D.* hath here'unto set his Hand and Seal, this Day of 'in the Year of our Lord

'Witness to the Execution of the said *C. D.*

And such Instruments respectively shall not be liable to any Stamp Duty.

"Act may be altered or repealed this Session. § 31."

No. 38.

50 George III. c. 65.—An Act for uniting the Offices of Surveyor General of the Land Revenues of the Crown, and Surveyor General of his Majesty's Woods, Forests, Parks and Chases. [9th *June*, 1810.]

No. 39.

52 George III. c. 161.—An Act for enabling his Majesty to grant Leases under certain Circumstances, and for the better carrying into Effect the Provisions of an Act passed in the Thirty-ninth and Fortieth Year of the Reign of his present Majesty, touching the Formation of a Map of the New Forest in the County of *Southampton*, and continuing and extending other Provisions of the said Act; for further appropriating the Monies arisen or to arise from the Sale of certain Crown Lands under the Authority of divers Acts of Parliament; for annexing certain Lands within the Forest of *Rockingham* to his Majesty's Manor of *King's Cliffe*; and for enabling the Commissioners of the Treasurer to appropriate small Portions of Land for Ecclesiastical Purposes. [29th *July*, 1812.]

'WHEREAS an Act was made in the Thirty-fourth Year of the 'Reign of his present Majesty, intituled, *An Act for the better 'Management of the Land Revenue of the Crown, and for the Sale* 52 G. III. c. 161. '*of Fee Farm and other unimproveable Rents*, reciting and repealing 34 Geo. III. c 7.. 'a Proviso contained in an Act, made in the First Year of the Reign 'of Queen Anne, intituled, *An Act for the better Support of her 'Majesty's Household, and the Honour and Dignity of the Crown*, 'so far as the same was contrary to any of the Provisions of the said 'Act of the Thirty-fourth Year of his present Majesty's Reign: 'And whereas by an Act passed in the Forty-eighth Year of the 'Reign of his present Majesty, intituled, *An Act to improve the 'Land Revenue of the Crown of* England, *and also of his Majesty's Duchy of* Lancaster, it was enacted, that where any Land 48 Geo. III. c. 73. § 1. 'or Ground belonging or thereafter to belong to his Majesty, his 'Heirs or Successors, within the Ordering and Survey of the Exchequer, or of the Duchy of *Lancaster*, shall be deemed by the Lord 'High Treasurer or the Chancellor of the Duchy of *Lancaster* for the 'time being, fit and proper for Gardens, Yards, Curtilages and other 'Appurtenances to be used and enjoyed with any House or Houses or 'Buildings erected or to be erected upon Ground belonging either to 'his Majesty, his Heirs or Successors, or to any other Proprietors, it 'should be lawful for his Majesty, his Heirs or Successors, to demise 'or grant such Land or Ground to any Person or Persons, or to any 'Bodies Politic or Corporate, under the Great Seal of *Great Britain*, 'or the Seal of the Exchequer, or the Seal of the Duchy and County 'Palatine of *Lancaster*, for any Term or Estate not exceeding Ninety-nine Years, to be computed from the Date or making any such 'Lease or Grant respectively; or if any such Lease or Grant be made 'to take Effect in Reversion or Expectancy, that the Term and 'Estate thereby to be granted, together with the Term or Estate, 'Terms or Estates in Possession of and in the same Lands and 'Grounds should not exceed Ninety-ninety Years, computed from 'the Date or making thereof as aforesaid; and it was thereby further 'enacted, that no Land or Ground for Garden, Yard, Curtilage or § 2. 'other Appurtenances to be used and enjoyed with any Houses or 'Buildings holden or to be holden under any Lease from his Majesty, 'or his Royal Predecessors, should be granted or demised for any Term 'or Estate exceeding in Duration the Term or Estate for which the

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52 G. III. c. 161

'Houses or Buildings to which such Land or Ground should be so 'attached as Garden, Yard, Curtilage or other Appurtenances should 'be holden: And whereas it would tend much to the Improvement 'of the Revenues belonging to his Majesty in Right of his said Duchy 'of *Lancaster,* if the Power of granting Leases for the Erection, re- 'pairing or rebuilding of Houses and other Buildings, on Lands within 'the Survey of the said Duchy, and of Gardens, Curtilages and Ap- 'purtenances to be used therewith, were enlarged, and if the Pro- 'visions in the said recited Act of the Thirty-fourth Year of his 'present Majesty were extended to Leases granted under the Seals 'of the Duchy and County Palatine of *Lancaster;*' Be it therefore enacted by the King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said recited Proviso in the said Act of the First Year of Queen ANNE contained, so far as the same is contrary to any of the Provisions of this Act, shall be and the same is hereby repealed; and that when any Land or Ground belonging or hereafter to belong to his Majesty, his Heirs or Successors, within the Ordering and Survey of the Chancellor and Council of his Majesty's Duchy of *Lancaster* for the time being, fit and proper for the Erection of Houses or other Buildings thereupon, or for the necessary Gardens, Yards, Curtilages and other Appurtenances to be used and enjoyed therewith, and shall be by their Order directed to be reserved or set apart and appropriated to that Use; or where the Lessee or Grantee, Lessees or Grantees shall agree and covenant to erect Buildings thereon of greater Yearly Value than the Land or Ground so to be leased or granted; or where the greatest Part of the Yearly Value of any Tenements or Hereditaments belonging to his Majesty, his Heirs and Successors as aforesaid, doth or shall at the time of making any Lease or Grant thereof consist of any Building or Buildings thereupon; in all and every or any of such cases it shall and may be lawful for his Majesty, his Heirs and Successors, to demise or grant the Land or Ground so directed to be set apart as aforesaid, or the Tenements or Hereditaments of the Description last aforesaid respectively, to any Person or Persons, or to any Body or Bodies Politic or Corporate, under the Seal or Seals of the said Duchy and County Palatine of *Lancaster,* for any Term or Estate, so as such Term or Estate do not exceed Ninety-nine Years or Three Lives, to be computed from the Date or making of any such Lease or Grant respectively; or if any such Lease or Grant be made to take Effect in Reversion or Expectancy, then that the Term and Estate thereby to be granted, together with the Term or Estate, Terms or Estates in Possession of and in the same Land and Ground, Tenements and Hereditaments respectively, shall not exceed Ninety-nine Years or Three Lives, computed from the Date or making thereof as aforesaid, and so as the respective Rents hereinafter specified or reserved for the same; that is to say, where there shall happen to be any substantial Building or Buildings upon the Ground to be demised, or that the Building or Buildings thereupon shall not require or not be intended and agreed to be rebuilt, there shall be reserved to his Majesty, his Heirs and Successors, an annual Rent or Rents, not being less than Two Third Parts of such annual Sum as shall be deemed, by the Chancellor and Council of the said Duchy for the Time being, a reasonable Rent or Consideration for such Building or Buildings and Ground respectively, for the Term and Estate intended to be granted of and in the same, and so as there be paid to the Use of his Majesty, his Heirs and Successors, a Fine or Fines to the Amount of the remaining Part of such annual Sum as aforesaid, subject to a Discount which shall not be computed

1 Anne, st. 1, c. 7, § 6 repealed.

His Majesty may lease Lands for building on.

at a higher Rate than the highest legal Interest at the time of making any such Grant or Lease; and when there shall happen to be no substantial Building upon the Land or Ground to be demised, or that the Building or Buidings thereupon required or should be intended and agreed to be forthwith rebuilt, or other new Buildings to be erected upon such Land or Ground, then and in that case there shall be reserved such annual Rent or Rents as shall be deemed by the Chancellor and Council of the Duchy for the Time being, to be a reasonable Rent or Consideration for such Land and Ground and old Buildings respectively for the Term and Estate intended to be granted of and in the same, without taking any Fine for the same, and so as in every Lease or Grant of Land or Ground and Buildings of the Description last aforesaid, there be contained a Covenant or Condition, on the Part of the Lessee or Grantee, for the erecting of proper and substantial Houses or other Buildings thereon, within a reasonable time to be in such cases limited for that Purpose, and such other Covenants for keeping Buildings in Repair, and doing all such other Acts as the Chancellor and Council of the said Duchy of *Lancaster* for the time being shall think reasonable, and so as all and every such Rent and Rents be reserved to be paid free and clear of all manner of Taxes and Assessments whatsoever, for and during the whole of the Term or Terms to be granted or demised, except such Rent or such Part thereof, during such Part of such Term or Terms as the Chancellor and Council of the said Duchy of *Lancaster* for the time being shall in any case think fit and expedient to be allowed, not exceeding in any case the Term of Three Years, and so as every such Grantee or Lessee, Grantees or Lessees, shall and do duly sign, seal and deliver a Counterpart or Counterparts of his, her or their respective Grant or Lease, Grants or Leases; and that all and every such Grants and Leases so made as aforesaid, according to the true Intent and Meaning of this Act, shall be good, valid and effectual in the Law; any thing contained in the said Act of the First Year of Queen ANNE, or any other Act, to the contrary notwithstanding. No. 39. 52 G. III. c. 161

'II. And whereas by the said recited Act of the Forty-eighth 'Year of his present Majesty, it was enacted, That whenever it 'should appear to the said Chancellor and Council of the said Duchy, 'that it would be to the Advantage of the Land Revenue of the 'Crown to exchange any Parcel or Parcels of Land belonging to his 'Majesty, his Heirs or Successors, for Land of equal or nearly equal 'Value, belonging to any other Person or Persons, Bodies Politic or 'Corporate, and such other Person or Persons, or Bodies, should 'consent to such Exchange, it should be lawful for the Surveyor 'General of the said Duchy to cause the Value as well of the said 'Parcel or Parcels of Land belonging to his Majesty, his Heirs or 'Successors, as of the said Parcel or Parcels of Land proposed to be 'exchanged for such Land of his Majesty, to be ascertained by some 'able and practical Surveyor of Land, who shall annex to his Survey, 'Estimate or Valuation thereof, when completed, an Oath (or, being 'of the People called *Quakers*, an Affirmation) taken and subscribed 'by him before any Justice of the Peace or Magistrate of the 'United Kingdom, who is respectively thereby authorized to administer an Oath or Affirmation in that Behalf, according to the Tenor 'and Effect therein mentioned, which Oath and Affirmation so taken 'and subscribed should be filed with the Survey and Estimate in the 'Office of the Clerk of the Council of the said Duchy; and the said 'Surveyor General of the said Duchy should report to the Chancellor 'and Council of the said Duchy, the Grounds of his Recommendation of the proposed Exchange, together with the said Valuation of 'the respective Parcels of Land; and if the Chancellor and Council of 48 Geo. III. c. 73, s. 23.

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52 G. III c. 161.

'the said Duchy should, upon due Consideration had, approve of 'such Exchange taking place, they should authorize the proper 'Officers of the said Duchy to carry the same into Effect, upon such 'Terms and Conditions as they should think fit, provided the same 'should be assented to by the Person or Persons, or Body, with 'whom such Exchange is proposed to be made, and the said Chan- 'cellor should thereupon cause the said Parcel of Land belonging to 'his Majesty to be conveyed to the said Person or Persons or Bodies 'respectively, with whom the said Exchange was proposed to be 'made; and such Person or Persons, or Body, should at the same 'Time convey to the said Chancellor and Council, in Trust for and 'on Behalf of his said Majesty, his Heirs and Successors, in Right of 'his said Duchy, the said Parcel or Parcels of Land so agreed to be 'given in Exchange for such Parcel or Parcels of Land as aforesaid; 'and from and immediately after the Completion of such Exchange, 'the said Parcels of Land so belonging to his Majesty, and given in 'Exchange as aforesaid, should vest in the Person or Persons, or 'Body, to whom the same was conveyed, for the same Estate or 'Interest, and as fully and effectually as the said Parcels of Land so 'given in Exchange did before such Exchange; and the said Parcels 'of Land so conveyed in Exchange to his Majesty, should vest in his 'Majesty, his Heirs and Successors, in Right of his Duchy as fully 'and effectually, and be subject to the same Application, as the said 'Parcels of Land so conveyed in Exchange to such Person or Persons, 'or Body, was vested in him before such Exchange. And whereas 'Doubts have arisen with Respect to the Form of the Conveyance in 'Cases of Exchange, empowered by the said recited Act of the Forty- 'eighth of the Reign of his present Majesty;' Be it enacted, That whenever it shall appear to the Chancellor and Council of the said Duchy, that such Exchange can be carried into Effect with Advantage to his Majesty, his Heirs and Successors, according to the Regulations directed by the said Act, it shall be lawful for the said Chancellor and Council, and they are hereby empowered to grant and convey to the said Person or Persons, or Bodies, respectively, with whom the said Exchange is proposed to be made, any Lands, Tenements or Hereditaments, Parcel of the said Duchy or County Palatine, in the Name of his Majesty, his Heirs and Successors, under the Seal or Seals of the said Duchy or County Palatine; and such Person or Persons, Body or Bodies, shall at the same Time convey to the said Chancellor and Council, in Trust for and on the Behalf of his Majesty, his Heirs and Successors, in Right of his said Duchy or County Palatine, the said Parcel or Parcels of Land so agreed to be given in Exchange as aforesaid; and from and immediately after the Completion of such Exchange, the said Parcels of Land so belonging to his Majesty, and given in Exchange as aforesaid, shall vest in the Person or Persons, or Body, to whom the same is conveyed, for the same Estate or Interest, and as fully and effectually as the said Parcel of Land so given in Exchange did before such Exchange; and the said Parcels of Land so conveyed in Exchange to his Majesty, shall vest in his Majesty, his Heirs and Successors, in Right of his said Duchy and County Palatine, as fully and effectually, and be subject to the same Application as the said Parcels of Land so conveyed in Exchange to such Person or Persons, or Body, was vested in him before such Exchange; any Thing in the said Act or any other Act or Acts contained to the contrary notwithstanding.

Doubts in Form of Conveyances, in Cases of Exchanges of Land within ordering and Survey removed.

'III. And whereas by the said recited Act of the Forty-eighth 'Year of the Reign of his present Majesty it was enacted, That it 'should be lawful for his Majesty, his Heirs and Successors, to demise 'or grant any Land or Ground belonging to his Majesty, his Heirs

48 G. 3, c. 73, § 1.

'and Successors, within the Ordering or Survey of the Exchequer and 'of the Duchy of *Lancaster*, which should be deemed fit and proper 'for Gardens, Yards, Curtilages, and other Appurtenances, to be 'used and enjoyed with any House or Houses or Buildings erected or 'to be erected upon Ground belonging either to his Majesty, his 'Heirs or Successors, or to any other Proprietor, for any Term or 'Estate not exceeding Ninety-nine Years, to be computed from the 'Date or making such Lease or Grant respectively: And whereas it 'is expedient that the said Power should be extended so as to enable 'his Majesty, his Heirs or Successors, to demise or grant for a like 'Term or Estate, any Land or Ground which shall be deemed fit and 'proper to be used or appropriated for any other Purposes calculated 'to afford Accommodation or Convenience to the Inhabitants or Oc-'cupiers of any such House or Houses, or Buildings, although the 'same may not be demised with or attached to any such House 'or Houses or Buildings, or let as for a Garden, Yard or Curtilage 'thereto;' Be it therefore further enacted, That where any Land or Ground belonging or hereafter to belong to his Majesty, his Heirs or Successors, within the Ordering or Survey aforesaid, shall be deemed by the Lord High Treasurer or Commissioners of the Treasury, or the Chancellor of the Duchy of *Lancaster* for the time being, fit and proper to be let or used for or appropriated to any Purpose calculated to afford Convenience or Accommodation to the Occupiers or Inhabitants of any House or Houses erected or to be erected upon Ground belonging either to his Majesty, his Heirs or Successors, or to any other Proprietor or Proprietors, it shall be lawful for his Majesty, his Heirs or Successors, to demise or grant such Land or Ground to any Person or Persons, or to any Body or Bodies Politic or Corporate, under the Great Seal of *Great Britain*, or the Seal of the Exchequer, or the Seal of the Duchy and County Palatine of *Lancaster*, for any Term or Estate not exceeding Ninety-nine Years, to be computed from the making thereof, with all such Powers, Privileges and Authorities as may be thought fit and requisite for the effecting or promoting the Object and Intent of such Demise or Grant, so as there be reserved upon every such Demise or Grant such annual Rent or Rents as shall be deemed by the Lord High Treasurer, or the Lords Commissioners of his Majesty's Treasury, or the Chancellor and Council of the Duchy of *Lancaster* for the time being, a reasonable Consideration for every such Demise or Grant, without taking any Fine for the same.

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His Majesty may demise Lands for Gardens, &c.

IV. 'And whereas by an Act passed in the Parliament holden in 'the Thirty-ninth and Fortieth Year of his present Majesty, intituled, '*An Act for the better Preservation of Timber in the New Forest in* '*the County of* Southampton, *and for ascertaining the Boundaries of* '*the said Forest, and of the Lands of the Crown within the same*, 'a Power was given to the Commissioners of the Treasury, for Ten 'Years, from and after the passing of that Act, to contract for the 'Exchange of any of the Waste Lands, lying in the New Forest be-'longing to the Crown, in the Manner therein mentioned, for any 'other Lands lying in the same Forest belonging to Individuals, of 'the Nature, Situation and Description, in the said Act, particularly 'specified: And whereas the Power granted to his Majesty by the 'said Act to contract for Exchanges, was continued by an Act, passed 'in the Fiftieth Year of the Reign of his present Majesty, intituled, '*An Act to extend and amend the Term and Provisions of an Act of* '*the Thirty-ninth and Fortieth Years of his present Majesty for the* '*better Preservation of Timber in the New Forest in the county of* 'Southampton, *and for ascertaining the Boundaries of the Forests*, '*and of the Land of the Crown within the same*, until the Twenty-'eighth Day of *July* One Thousand Eight Hundred and Eleven:

39 & 40 G. 3, c. 86. § 29.

50 G. 3, c. 116. § 1.

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52 G. III. c. 161.

51 G. 3, c. 94.

'which said last mentioned Act was continued until the Twenty-fifth 'Day of *July* One Thousand Eight Hundred and Twelve, by an Act 'passed in the last Session of Parliament; and it is expedient to continue and enlarge such Permission, and also to permit the Exchange 'and Sale of Property of the Nature and Situation therein and herein 'described, in all the Forests belonging to his said Majesty;' Be it therefore enacted, That, from and after the passing of this Act, it shall be lawful for the Lord High Treasurer or the Lords Commissioners of his Majesty's Woods, Forests and Land Revenues, or the Surveyor General of his Majesty's Woods and Forests for the Time being, on the Behalf of his Majesty, his Heirs and Successors, to grant or contract to grant to any Persons, Bodies Politic or Corporate, any of the Waste or other Lands of the Crown within any of the said Forests, in Exchange for any other Lands in or adjoining to the same Forest respectively, whereof such Person or Persons, Bodies Politic or Corporate, shall or may be seised in Fee Simple or absolutely entitled to an Estate of Copyhold or Customary or Leasehold Tenure, the Reversion thereof being in the Crown, and being fit and proper for the Growth of Timber, and conveniently situated for that Purpose; and that all and every Exchange and Exchanges, so made shall be good, valid and effectual in the Law to all Intents and Purposes whatsoever; any Infancy, Coverture or other Disability in the Parties interested in such Exchange, or any Law or Statute to the contrary in any wise notwithstanding; provided the Value of each Piece of Land so to be exchanged does not exceed One Thousand Pounds, and that all such Exchange of Freehold Premises shall be made according to the Form marked (A) and set forth in the Schedule hereto annexed, and that all such Exchange of Leasehold Premises shall be made according to the Form marked (B) also set forth in the said Schedule, or as near thereto as may be.

Treasury may authorize Commissioners of Woods, &c. to contract for exchanging Lands.

Proviso.

V. 'And whereas there are in various Parts of the several Royal 'Forests, sundry Parcels of Land belonging to the Crown, which are 'wholly or in Part surrounded by or intermixed with or contiguous 'and adjoining to other Lands, the Property of some of his Majesty's 'Subjects, and which said Forest Lands are of little or no Value to 'the Crown for the Growth of Timber, either by Inclosure and Planting, or otherwise, and it may conduce to the more easy Care of the 'Rights of the Crown within the said Forests, as well as to the Convenience of his Majesty's Subjects, as if a Power should be given to 'the Lord High Treasurer, or to the Lords Commissioners of his 'Majesty's Treasury for the time being, to authorize the Sale of small 'Parcels of Forest Land;' Be it therefore enacted, That, from and after the passing of this Act, if it shall appear to the Lord High Treasurer, or to the Lords Commissioners of his Majesty's Treasury for the time being, upon the Report of the Commissioners of his Majesty's Woods, Forests and Land Revenues, or upon the Report of the Surveyor General of his Majesty's Woods and Forests for the time being, that any small Parcel or Parcels of Land within any of the Royal Forests belonging to the Crown are intermixed with, adjoin or are contiguous or convenient to, or surrounded by the Lands of Individuals, and is, or are of little or no Value to the Crown for the Growth of Timber, either by Inclosure and Planting or otherwise; it shall be lawful for the said Lord High Treasurer, or the said Lords Commissioners of his Majesty's Treasury for the Time being, or any Three or more of them, to authorize the said Commissioners of his Majesty's Woods, Forests and Land Revenues, or the Surveyor General of his Majesty's Woods and Forests for the time being, to contract and agree, on the Behalf of his said Majesty, his Heirs and Successors, with the Person or Persons whose Lands shall be intermixed with, or shall ad-

Treasury to alienate small Parcels of Land intermixed with Lands of Individuals.

join to, or be contiguous or convenient to, or surrounded by such Parcel or Parcels of Land so situated as aforesaid for the Sale thereof, and to make good and effectual Conveyance thereof, for such Price or Prices as shall be certified to the said Commissioners of the Treasury by the said Commissioners of his Majesty's Woods, Forests and Land Revenues, or by the Surveyor General of Woods and Forests, to be just and reasonable; such Price in no case to be under the Value set upon such Land by the Surveyor to be employed to value the same in the manner hereinafter provided, and the same to be paid into the Hands of the said last mentioned Commissioners, or into the Hands of the said Surveyor General for the time being, and to be by them or him accounted for in manner hereinafter specified: Provided always, that the Lands of the Crown to be so sold and disposed of shall not exceed in Value in any Instance the Sum of One Thousand Pounds; and the Conveyance or Conveyances of such Parcel or Parcels of Land so to be sold and disposed of, be according to the Form marked with the Letter (C.) set forth in the Schedule hereunto annexed, or as near thereto as may be.

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Proviso.

VI. Provided always, and be it further enacted, That, in order to secure a true and just Price to be set on the Land of the Crown, and on that of Individuals to be given in Exchange, and also on the Land of the Crown to be sold by virtue of this Act, the same in every Instance shall be valued by an able and practical Surveyor of Land, to be appointed by the Commissioners of his Majesty's Woods, Forests and Land Revenues, or by the Surveyor General of his Majesty's Woods and Forests for the Time being, on Behalf of his Majesty; and the Land Surveyor so appointed for making such Valuation shall certify, by his Report in Writing under his Hand, what is in his Judgment the true and fair Worth and Value of the Lands and Premises so by him surveyed and valued, clear of all Taxes, Assessments and Reprizes whatever; and shall also annex to such Survey or Estimate or Valuation, an Oath or (being one the People called Quakers) an Affirmation, taken and subscribed by him before any One of the said last-mentioned Commissioners, or before such said Surveyor General, or before any One of his Majesty's Justices of the Peace in and for the County wherein any such Land proposed to be exchanged or sold shall be, which Oath or Affirmation they are hereby respectively authorized to administer, and which Oath or Affirmation shall be in the Form following; that is to say,

Land exchanged or sold surveyed by practical Surveyors.

'I *A. B.* do swear [*or*, being a Quaker, do solemnly affirm] That 'the Survey or Account hereto annexed was faithfully and impar-'tially made by me; that the Value of the Property of the Crown, 'and of *C. D.* therein contained, is justly estimated therein accord-'ing to the best of my Skill and Judgment; and that all the Particu-'lars stated in the said Survey are true to the best of my Knowledge 'and Belief.'

Oath.

Which Oath or Affirmation so taken and subscribed, shall be filed with the Survey and Estimate, in the proper Office for depositing the same.

'VII. And whereas there are in divers of his Majesty's Forests, 'Quarries of Freestone, Limestone, Slate and other Stone, and Strata 'or Veins of Coal and Iron Ore, and of Marl, the Produce of which 'is of great Value, but by reason of the Steepness of the Ground in 'some Places, and the Wetness or Depth of the Soil in others, the 'Access to the same is in many Instances at all Times difficult and 'often impracticable: And whereas it would in many Cases greatly 'facilitate the getting and carrying away of the said Freestone, Lime-'stone, and other Stones, Slate, Coal, Iron Ore and Marl, if Permis-

No. 39. 52 G. III c. 161. 'sion were given to erect Fire or Steam Engines for raising the same, 'and the Water collecting in the Pits where they are got, and to form Rail or Tram Roads and Inclined Planes for carrying away the said Freestone, Limestone, and other Stone, Slate, Coal, Iron Ore and Marl; and many Individuals might be willing to make such Railways or Tram Roads and Inclined Planes, or to erect such Fire or Steam Engines, if they should obtain Leave for that Purpose;' Be it therefore enacted, That, from and after the passing of this Act, whenever Application shall be made by any Person to the said Commissioners of his Majesty's Woods, Forests and Land Revenues, or to the said Surveyor General of his Majesty's Woods and Forests for the Time being, for Leave to make any Railway, Tram Road or Inclined Plane, or to build or erect any Fire or Steam Engine as aforesaid, and it shall appear to the said Commissioners, or to the said Surveyor General, that it would be for the Advantage of the Public, and not detrimental to the Interests of the Crown, that such Railway, Tram Road or Inclined Plane should be made, or that such Fire or Steam Engine should be built or erected, it shall be lawful for the Lord High Treasurer, or the Lords Commissioners of his Majesty's Treasury for the Time being, to authorize the said Commissioners of Woods, Forests and Land Revenues, or the said Surveyor General of his Majesty's Woods and Forests for the Time being, to grant a Lease for any Term not exceeding Thirty-one Years, of such Part of the Royal Forests as may be necessary for the Purpose of making any such Railway, Tram Road or Inclined Plane, or for erecting such Fire or Steam Engine, with a Licence in such Lease to make or erect the same under such Modifications and Restrictions, for such yearly Rent, and upon such Terms and Conditions, as to the said Commissioners of his Majesty's Woods, Forests and Land Revenues, or to the said Surveyor General of his Majesty's Woods and Forests for the Time being, may seem expedient; which Lease may be according to the Form hereunto annexed, and marked with the Letter (D.) or as near thereto as may be: Provided always, that no such Lease and Licence for the Purpose of making such Railway, Tram Road or Inclined Plane, or of erecting such Fire or Steam Engine, shall be granted in any Case where the Use of the same would interfere with or in any way abridge or prove inconsistent with the Exercise of the Rights vested in either of the Companies established by Two Acts of Parliament passed in the Forty-ninth Year of King George the Third, the one intituled *An Act for making and maintaining a Railway or Tram Road from the Summit of the Hill above* Churchway Engine, *in the Forest of* Dean, *in the County of* Gloucester, *to a certain Place in the said Forest called* Cinderford Bridge; the other intituled *An Act for making and maintaining a Railway from the River* Wye, *at or near to a Place called* Lidbrook, *in the Parish of* Ruardean, *in the County of* Gloucester, *to or near to a Place called* The Lower Forge, *below* Newern, *in the Parish of* Lydney, *in the said County, and for making other Railways therein mentioned, in the Forest of* Dean, *in the County of* Gloucester; without the previous Consent and Concurrence of the Companies incorporated under the said Acts.

Treasury empowered to authorize making of Railways, &c. to Quarries, &c. in Forests; & Commissioners of Woods, &c. or Surveyor-General of Woods, &c grant Leases.

Proviso.

49 G. 3, c. 158.

49 G. 3, c. 159.

'VIII. And whereas many Purprestures, Encroachments and 'Trespasses have been made and continued in and upon the Soil of 'his Majesty, within the Boundaries of the Royal Forests, some of 'them contiguous and similar in Soil, Situation and Exposure to 'Parts of the said Forests well calculated for the Growth of Timber 'for the Use of the Navy, and some in particular within the Parts of 'the New Forest and Forest of *Dean*, which have been already set 'out for that Purpose under the Statutes in that case made and pro-'vided; and it is expedient that more effectual Provision than has

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'hitherto been obtained, should be made for dealing with all such 'Purprestures and Encroachments, in such manner as shall best 'answer the Purpose of preserving and maintaining his Majesty's 'Rights over the same;' Be it further enacted, That, from and after the passing of this Act, in case of any Purprestures or Encroachments situate in Parts of any of the Forests fit for the Growth of Timber, which Purprestures or Encroachments shall appear to have been inclosed, or used and occupied by the Person or Persons then in Possession thereof, or by any Person or Persons under whom the same is or are respectively claimed to be held, without any effectual Interruption by or on the Part of his Majesty for any Period not less than Ten Years, and where Expence shall appear to have been incurred in the Improvement thereof by the Erection of Buildings or otherwise, and the Claimant or Claimants, Occupier or Occupiers shall have relinquished the same on receiving Notice so to do, it shall be lawful for the Commissioners of his Majesty's Woods, Forests and Land Revenues, or the Surveyor General of his Majesty's Woods, Forests for the time being, by and with the Authority of the Lord High Treasurer or Lords Commissioners of his Majesty's Treasury for the time being, to make such Satisfaction or Compensation in Money, in Consideration of the Removal, Abatement or Resumption of any Encroachment or Purpresture so situated, as shall by the said Commissioners or the said Surveyor General for the time being, be deemed reasonable and proper, under all the circumstances of the case, or to grant a Lease of some other Part or Parts of the Forests situated on the Skirts or Borders thereof, which on account of such Situation or other circumstances shall not be deemed fit for the Growth of Timber, or likely to interfere with any Inclosures or Plantations to be made for that Purpose, for such Term of Years, not exceeding Thirty one, as shall be deemed a reasonable Allowance by way of Compensation for the Expence which shall appear to have been incurred in such Improvements; provided that there shall be reserved to be paid to his Majesty, his Heirs and Successors, by the Person or Persons to whom such Lease shall be so granted, such Annual Rent or Rents as, under all the circumstances of the case, shall by the said Commissioners of his Majesty's Woods, Forests and Land Revenues, or the said Surveyor General of his Majesty's Woods and Forests for the time being, be deemed reasonable and proper.

Treasury or Surveyor General may make Compensations, or grant Leases to Persons relinquishing Parts of Forest.

IX. And be it further enacted, That from and after the passing of this Act, in cases where Purprestures and Encroachments shall have been made Twenty Years at least before the passing of this Act, (and which shall not within that Period have been abated or presented at any Forest Court) on the Skirts and Borders of any of the said Forests, or upon Parts thereof not adapted to or convenient for the Growth of Timber, or likely to interfere with any Inclosures or Plantations to be made for that Purpose, and where the Persons in Possession of the same shall be desirous of retaining such Possession under a Lease or Leases thereof, it shall be lawful for the Commissioners of his Majesty's Woods, Forests and Land Revenues, or for the Surveyor General of his Majesty's Woods, and Forests for the time being, under the Authority of the Lord High Treasurer or the Lords Commissioners of his Majesty's Treasury for the time being, to grant such Lease or Leases for any Term not exceeding Thirty-one Years, in Consideration of the Payment of such Annual Rent or Rents, and under such Covenants, Conditions and Stipulations as, according to the circumstance of the case, shall by the said Commissioners of his Majesty's Woods, Forests and Land Revenues, or the said Surveyor General of his Majesty's Woods and Forests for the Time being, be deemed reasonable and proper; and such Lease

Encroachments made on Skirts of Forests, or in Parts not suited for Growth of Timber, Commissioners of Woods, &c. or Surveyor General empowered to grant Leases.

No. 39. 52 G. III. c. 161. or Leases shall be made out accordingly, and may be according to the Form set forth in the Schedule hereto annexed, and marked with the Letter (D.) or as near thereto as may be, without any Fine, Fee, or Reward to be paid for the same, or other Charge, except the Expences actually incurred for writing and engrossing such Leases.

Instrument enrolled in Office of Auditor of Land Revenue.

X. And be it further enacted, That every Agreement, Deed, Conveyance and Lease authorized by this Act, together with a Map or Plan of the Land exchanged, sold or demised thereby, shall be enrolled in the Office of the Auditor of his Majesty's Land Revenue, and a Minute or Docquet thereof entered and preserved in the Office of the said Commissioners of his Majesty's Woods, Forests and Land Revenues, or in the Office of the said Surveyor General of his Majesty's Woods and Forests for the time being; and that from and after such Enrolment or Entry, his Majesty, his Heirs and Successors, in Right of the Crown, shall be deemed to be in the actual and lawful Seisin and Possession of any Land taken in Exchange; and that the Party with whom such Exchange shall be so made, shall have, hold and enjoy the Lands and Premises so given in Exchange, as of the same Tenure, and subject to the same Charges and invested with the same Rights and Privileges, as the Land taken in Exchange was before such Exchange legally subject to and invested with, but freed and discharged from any other Right, Title or Claim of the Crown to the Soil, than such as shall be incident to the Nature of such Tenure, and from all Common of Pasture and other Rights of Common; and the Party to whom any Land shall have been so sold, or conveyed by Exchange, shall hold or enjoy the same, freed from any Right, Title or Claim of the Crown, and from all Common of Pasture or other Right of Common.

Unlawful Enclosures, &c. enquired of by Verderers, &c.

'XI. And whereas the Number of unlawful Enclosures, Purprestures, Encroachments and Trespasses in the Royal Forests has of late Years been much increased, and the Fences of many of such Encroachments, and the Houses and Buildings erected thereon, though at different times abated and thrown down by the Keepers 'or other Officers of the said Forests, have again been re-instated by 'the Trespassers who originally made them, or by others subsequently 'occupying or claiming the same: And whereas it is expedient that 'more effectual Provision should be made for the Prevention of such 'Offences, and for the Punishment of the Offenders in future;' Be it therefore enacted, That, from and after the passing of this Act, all such unlawful Enclosures, Purprestures, Encroachments and Trespasses which shall have been wilfully made, or caused or procured to be made, by any Person or Persons, in and upon any of the Royal Forests, or shall be wilfully held, occupied and made use of by any Person or Persons subsequently occupying or claiming the same, save and except such as have been demised or in respect of which any Treaty for a Demise shall or may be pending between the said Commissioners of Woods, Forests and Land Revenues, and the Party or Parties who shall be pretended Owners or actual Occupiers thereof, shall and may be enquired of, by the Verderers of the respective Forest or Forests within which such unlawful Enclosures, Purprestures, Encroachments or Trespasses shall have been made, in the Court or Courts of Attachment of the said Forest or Forests; and the Person or Persons guilty of making, continuing and renewing any such unlawful Enclosure, Purpresture, Encroachment or Trespass, save as aforesaid, shall and may be prosecuted for the same in the said Court

Penalty.

or Courts; and upon Proof being made thereof, on the Oath of One credible Witness, the Verderers of the said Forest or Forests, or any Two of them, present at the said Court or Courts, shall have Power, and they are hereby authorised to fine any Person or Persons so offend-

ing, for every such Offence, in any Sum not exceeding Twenty Pounds, to be recovered and applied in Manner hereinafter provided for, and to order and direct every such unlawful Enclosure, Purpresture, Encroachment and Trespass, save as aforesaid, to be abated by the Regarders, Under Foresters, Under Keepers or other Officers of the said Forest or Forests, who are hereby authorized and empowered to abate the same accordingly: Provided nevertheless, that in case it shall be insisted upon by any Person or Persons, who shall be proceeded against in any of the said Attachment Court or Courts as hereinbefore directed, that the Place wherein the Enclosure, Purpresture, Encroachment or Trespass shall have been or shall be alledged to have been made, was not within the Boundaries of the said Forest or Forests, or within the Lands belonging to his Majesty within the same, the said Verderers shall not proceed to Conviction, but shall certify the Presentment of such Offence to his Majesty's Attorney General, to the End that such Proceeding may be had therein by Information of Intrusion, or otherwise, as by Law might have been had before the passing of this Act.

No. 39. 52 G. III. c. 161.

Proviso

XII. And be it further enacted, That it shall be lawful for the Verderers of any of the said Forests, or any Two of them, at any Court of Attachments holden for any of the said Forests, by Warrant or Warrants under the Hands and Seals of them, or any Two of them, to nominate and appoint any Person or Persons to be the Officer or Officers of the said Court or Courts, Forest or Forests, for the Purpose of executing the Judgments and Orders of the said Court or Courts, from Time to Time given and made; and the Person or Persons so appointed shall, during the Time mentioned in such Warrant or Warrants, or until the same shall be recalled, or their Appointment or Appointments revoked by the said Verderers, have full Power and Authority to execute the Judgments and Orders of the said Court or Courts, within the said Forest or Forests, in such and the same Manner, and by such and the same Means, as any Constable or other Peace Officer can or may by Law execute the Warrant of any Justice of the Peace for any County; and the said Verderers, or any Two of them, shall and may fix and allow such Fees to be paid to or taken by such Officer and Officers, as the said Verderers shall in their Discretion think fit.

Verderers may appoint Officers for executing Orders of Court;

and fix Fees.

XIII. And be it further enacted, That every Regarder, Under Forester, Under Keeper or other Officer of any of the said Forests, shall, within the Space of One Calender Month next before the holding of the First Court of Attachments in each Year, and within a reasonable Time before the holding of any other Court or Courts of Attachment for any of the said Forests, carefully survey such Part or Parts of the said Forests as shall be within his or their Regard, View, or Cognizance, or within the respective Walks of the several Under Foresters or Under Keepers of any of the said Forests, and shall take an Account of all unlawful Enclosures, Purprestures, Encroachments and Trespasses whatever, made, done, or committed within the same, since any preceding Survey or Surveys which shall have been made by them or any of them, on any Part or Parts of any of the said Forests as aforesaid, or which were not noticed in such preceding Survey or Surveys; and every such Regarder, Under Forester, Under Keeper or other Officer, shall, at every Court or Courts of Attachments holden for any of the said Forests, make and deliver to the Verderers thereof then present, a true Return and Presentment of all such unlawful Enclosures, Purprestures, Encroachments and Trespasses, as he or they shall find to have been made, done or committed, within any Part or Parts of the said Forests which shall be within his or their Regard, View or Cognizance, or within the respective Walks of the

Regarders, &c. shall before holding of Courts of Attachments survey Forests, and take Account of Enclosures, &c.

No. 39. 52 G. III. c. 161. several Under Foresters and Under Keepers of any of the said Forests, or which he or they shall not have returned or presented at the preceding or some former Court or Courts, or which having been made before such last Survey or Surveys, shall not have been abated, and at what Time or Times and in what particular Part or Parts of any of the said Forests, and by whom, any such unlawful Enclosures, Purprestures, Encroachments and Trespasses, have been made, done or committed, so far as they have been able to ascertain the same; and every such Regarder, Under Forester, Under Keeper or other Officer, shall at the Time of making or delivering in his said Return or Presentment, make Oath before the said Verderers (which Oath they or any One of them is hereby authorized to administer) that to the best of his Knowledge, Information and Belief, no unlawful Inclosure, Purpresture, Encroachment or Trespass, hath been made, done or committed, or then exists, within such Part or Parts of any of the said Forests as shall be within his Regard, View or Cognizance, or within the respective Walks of the several Under Foresters or Under Keepers of any of the said Forests, other than such as are contained and described in the Return or Presentment then made and delivered in by him, or made or delivered in at the preceding or at some former Court, specifying the Time at which the same was held.

Court of Attachments may enquire into Conduct of Regarders, &c. neglecting Duty.

XIV. And be it further enacted, That it shall be lawful for the Verderers of any of the said Forests, or any Two of them, at any Court or Courts of Attachments to be holden for any of the said Forests, to enquire into the Conduct and Behaviour of the Regarders, Under Foresters, Under Keepers or other Officers of the said Forests, in their said Offices; and if the said Verderers shall find that any Regarder, Under Forester, Under Keeper or other Officer, hath wilfully given or delivered in to them any untrue Return or Presentment, or hath concealed or wilfully omitted to insert in such Return or Presentment, any unlawful Enclosure, Purpresture, Encroachment or other Trespass, which ought to have been described or noticed therein, or hath wilfully and without good Cause neglected to make such Survey as is hereinbefore directed, or hath been guilty of any wilful Neglect in the Care of the Timber or other Trees, Woods, Thorns or Bushes, situate within such Part or Parts of any of the said Forests as shall be within his or their Regard, View or Cognizance, or within the Walk or Walks of any of the said Under Foresters or Under Keepers, or other Officers of any of the said Forests, or in any other respect hath wilfully omitted to perform the Duty of his Office, it shall be lawful for the Verderers of any of the said Forests, or any two of them, (having due Proof made before them on Oath of any such wilful Neglect, Omission or Default) and they are hereby authorized to set and impose a Fine not exceeding the Sum of Ten Pounds on such Regarder, Under Forester, Under Keeper or other Officer, for every such his wilful Act, Neglect, Omission or Default, to be recovered and applied as hereinafter mentioned; and for the second Offence, such Regarder, Under Forester, Under Keeper or other Officer, shall forfeit and be deprived of his Office, and shall not at any time afterwards be restored to such Office, unless the Verderers, or any Two of them, shall by Order to be made by them at a Court of Attachments, signify that in their Judgment such Regarder, Under Forester, Under Keeper or other Officer, may properly be re-appointed or restored to his said Office; and if any such Officer shall be again convicted of a like Offence whereby his Office shall become forfeited, he shall be incapable of being again appointed to such Office, or of holding any Office or Employment whatsoever within any of the said Forests.

Fine. Second Offence. Third Offence.

XV. And be it further enacted, That all pecuniary Penalties imposed, and Fees authorised by this Act, and not hereinbefore directed

to be recovered before the Verderers of any of the said Forests, or in the said Courts of Attachments, shall and may be recovered in a summary way, before any Justice or Justices of the Peace for any County, Riding, Division or Place, in which the Person having incurred the same shall happen to be; and in case any Penalty recovered before any Justice or Justices of the Peace, or before the Verderers of any of the said Forests, or any Two of them, or in the said Courts of Attachments, or any Fine set or imposed, by the said Verderers, or any Two of them, or the said Courts, shall not be paid forthwith, it shall be lawful for the Justice or Justices, or Verderers, or the said Courts by whom such Fine shall be set or imposed, or before whom such Penalty shall be recovered, by Warrant under his Hand and Seal, or their Hands and Seals, and directed by such Justice or Justices, to any Constable or other Peace Officer, and by the said Verderers to the proper Officer or Officers to be appointed for any of the said Forests in the manner hereinbefore provided, to cause such Fine or Penalty to be levied by Distress and Sale of the Offenders Goods and Chattels, together with all Costs and Charges attending such Distress and Sale; and in case no sufficient Distress can be had or made, such Justice or Justices, Verderers or Courts, shall, if he or they shall think proper, commit the Offender to the Common Gaol for, or some House of Correction, within such County, Riding, Division, City, Town or Place as aforesaid, there to remain without Bail or Mainprize, for any time not exceeding Six Months.

No 39. 52 G. II. c. 161.

Penalties not directed to be recovered before Verderers, or in Courts of Attachments recovered before Justice.

Distress.

Imprisonment.

XVI. Provided always, and it is hereby declared, That nothing in this Act contained shall extend or be deemed or construed to extend, to defeat, alter or infringe all or any of the Rights, Privileges or Advantages which may be enjoyed or claimed under any Letters Patent granted by His said Majesty, his Ancestors, or Predecessors, of any Office, Bailiwick, Walk or Lodge, within any of the said Forests.

Act not to infringe Rights under Letters Patent.

XVII. Provided always, and be it further enacted, That nothing herein contained shall extend or be construed to extend to prevent His Majesty from proceeding by Information in His Court of Exchequer, or from having Recourse to any other Law which may now exist for the Punishment of Offences of the nature hereinbefore mentioned, in all cases where such Proceedings shall be deemed more adviseable than those which are authorized by this Act.

Not to prevent proceeding by ordinary Course of Law.

XVIII. And be it further enacted, That all Sums of Money which shall accrue either by Penalties recovered under this Act or from the Sale of or as Rent for any Lands sold or demised by virtue of this Act, shall be paid to the Commissioners of His Majesty's Woods, Forests and Land Revenues, or to the Surveyor General of His Majesty's Woods and Forests for the time being, to be by them or him paid into the Hands of the Governor and Company of the Bank of *England*, and applied and accounted for with the other Funds under their or his Management, in the manner directed by an Act of the Forty sixth Year of the Reign of His present Majesty, intituled *An Act for the better Regulation of the Office of Surveyor General of Woods and Forests.*

Rent of Lands paid to Commissioners, &c. and applicable as other Funds.

46 G. 3, c. 142.

'XIX. And whereas by an Act made in the Thirty-ninth and 'Fortieth Years of His present Majesty, intituled *An Act for the better Preservation of Timber in the* New Forest *in the County of* 'Southampton, *and for ascertaining the Boundaries of the said* '*Forest, and of the Lands of the Crown within the same*, it was, 'amongst other things, enacted, That the Commissioners thereby 'appointed should cause a Map or Plan to be made of the said Forest 'in manner therein mentioned: And whereas the said Map has not 'hitherto been framed according to the Provisions of the said Act; 'and it is expedient that the same should be executed with as little

39 & 40 G. 3, c. 86.

§ 12.

No. 39. 52 G. II. c. 161.

'Delay as possible,' Be it enacted, That it shall be lawful for the Commissioners of His Majesty's Treasury, or any Three or more of them, to employ Surveyors, or other proper Persons, in framing such Map or Plan; and they are hereby required to complete the same within Five Years from and after the passing of this Act.

Map or Plan completed in 5 Years.

Surveyors of Roads, &c. not to dig Gravel, &c. in Woods of the Crown.

XX. And be it further enacted, That, from and after the passing of this Act, it shall not be lawful for any Surveyor of any Turnpike Road or any Highway, or for any other Person, to dig, get, or carry away or cause to be dug, got or carried away any Stone or Gravel, or other Materials for the making or repairing of any Road or way, or for any other Purpose, in or from any of His Majesty's Forests, whereby any Plantation or Tree belonging to His Majesty may be or be liable to be injured or damaged.

Commissioners not to sell, &c. Marl Pits, Peat Lands or Gravel Pits.

XXI. Provided always, and be it further enacted, That nothing herein contained shall extend or be construed to empower or enable the Commissioners of His Majesty's Woods, Forests and Land Revenue, or the Surveyor General of His Majesty's Woods and Forests for the time being, to grant in Exchange, or to make Sale of any open or accustomed Marl Pits, or any Bogs or Lands from which Peat has been usually gotten for Fuel, or any Gravel Pits now open, situate in or within any of the said Forests, or any Lands, by the Exchange or Sale whereof the Owners or Occupiers of any Estates adjoining or contiguous to the said Forests shall be deprived of their usual or accustomed Supply of Marl or Peat from the said Forests.

Exchange, &c. not to be made to shut up Access to Forest from adjoining Estates.

XXII. Provided also, and be it enacted, That nothing in this Act contained shall extend to empower or enable the said Commissioners of His Majesty's Woods, Forests and Land Revenues, or the Surveyor General of His Majesty's Woods and Forests for the time being, to grant in Exchange or make Sale of any Land within any of the said Forests, in such manner as to prevent any Person or Persons having Right of Common on such Forests from having Access to such Forests for the Purpose of enjoying such Right of Common, as effectually and conveniently as he or they now has or have, or otherwise might have had, or to prevent any Person or Persons from having Access from the said Forests to any Lands belonging to him or them, lying adjacent or contiguous to the said Forests, as fully as he or they now has or have or otherwise might have had.

50 G. 3, c. 65, § 11.

XXIII. 'And whereas by an Act, passed in the Fiftieth Year of the Reign of His present Majesty, intituled *An Act for uniting the Offices of Surveyor General of the Land Revenues of the Crown, and Surveyor General of His Majesty's Woods, Forests, Parks, and Chases*, the Commissioners of His Majesty's Woods, Forests, and Land Revenue, or any One of them, are authorized to receive a Verification and take an Examination on Oath touching and concerning all Matters of Surveys, Returns, Reports, Estimates, Accounts and other Matters and Things, of and from every Officer and other Person, in all Cases wherein the Surveyor General of His Majesty's Woods, Forests, Parks and Chases, was immediately before the passing of that Act by Law authorized so to do: And whereas it is expedient that a like Authority should be given to receive Verifications and take Examinations on Oath touching Matters which relate to the Department of His Majesty's Land Revenue, and which were, previous the passing of the abovementioned Act, under the separate Cognizance or Management of the Surveyor General of that Department;' Be it therefore enacted, That it shall be lawful for the said Commissioners, or any One of them, and they or any One of them are and is hereby authorized to receive a Verification and take an Examination upon Oath of and from any Officer and other Person employed in making and conducting any

Commissioners of Woods, &c. to receive Verification, &c. touching Matters relating to the Department of Land Revenue.

Surveys, Returns, Reports, Estimates and Accounts, or other Matters and Things touching and concerning the said Department of His Majesty's Land Revenue, in like manner as they are by the said above mentioned Act empowered to do in all Matters and Things relating to the Department of His Majesty's Woods, Forests, Parks and Chases; and if any Officer or other Person shall in any such Verification or Examination upon Oath as aforesaid, knowingly and wilfully forswear himself, herself or themselves, such Officer or other Person so offending shall be liable to be punished in such manner as is provided by the different Laws and Statutes now in force for the Punishment of wilful and corrupt Perjury. No. 39. 52 G. III c. 161. Perjury.

XXIV. And be it further enacted, That where any thing is directed, required or permitted to be done under this Act, by the Commissioners of His Majesty's Woods, Forests and Land Revenues, the same may be done by any Two of such Commissioners. Two Commissioners of Woods, &c. may act.

XXV. [Certain Purchase Monies, arising from Sale of Crown Lands, to be laid out in Purchase of Lands fit for Growth of Timber.]

XXVI. [Certain Crown Lands sold to the Marquis of Exeter to become Part of Manor of King's Cliffe.]

XXVII. 'And whereas in and by an Act passed in the Fifty-first 'Year of the Reign of His present Majesty, intituled *An Act for* *amending the Act Forty-third* George *the Third, to promote the* *building, repairing or otherwise providing the Churches and Chapels,* *and of Houses for the Residence of Ministers, and for providing of* *Church Yards and Glebes,* it was, among other things, enacted, That 'the King's Most Excellent Majesty, His Heirs and Successors, should 'have full Power, Licence and Authority, by Deed or Writing, under 'the Great Seal, to give and grant, and vest in any Person or Persons, 'Bodies Politic and Corporate, and their Heirs and Successors respectively, all such, his, her or their Estate, Interest or Property, in any 'Lands or Tenements, within the Survey of the Court of Exchequer, 'for or towards the erecting, rebuilding, repairing, purchasing or providing any Church or Chapel where the Liturgy and Rites of the 'United Church of *England* and *Ireland* are or shall be used or 'observed, or any Mansion House, for the Residence of any Minister 'of the said United Church officiating or to officiate in any such 'Church or Chapel, or any Outbuildings, Offices, Church Yards or 'Glebe, for the same respectively, and to be for those Purposes applied 'in and by such Deed as aforesaid expressed, provided that nothing in 'this Act now in recital contained should extend or be construed to 'extend to enable His Majesty, his Heirs or Successors, to grant more 'than Five Acres in any One Grant for any of the Purposes aforesaid: 'And whereas it is found expedient that the Powers of the same Act 'should be extended to Ground for Curtilages, Accesses or any other 'Conveniences or Accommodations of or to any of such Churches or 'Chapels as aforesaid: And whereas the passing of Deeds or Writings 'under the Great Seal for the Purposes aforesaid, by reason of the 'great Expence attending the same, may in some cases produce 'Inconvenience and frustrate the Intention of the said Act;' Be it therefore enacted, That His said Majesty, his Heirs and Successors, shall have full Power, Licence and Authority to give and grant, and vest in any Person or Persons, Body or Bodies Politic or Corporate, and their Heirs and Successors respectively, in manner hereinafter mentioned, all such his, her or their Estate, Interest or Property in any Lands or Tenements within the Survey of the Court of Exchequer, or of the Duchy of *Lancaster*, for Curtilages, or for Accesses, or for any other Conveniences or Accommodations of any such Churches or Chapels as aforesaid; and such Person or Persons, Body or Bodies Politic or Corporate, and their Heirs and Successors respectively, shall 51 G.3, c.115 § 1. His Majesty may grant Land for Curtilages & Accesses to Churches or Chapels.

No. 93. 52 G. III. c. 161. have full Capacity and Ability to receive, take, hold and enjoy the same according to the Intent and Meaning of the said Act, and whenever it shall be the Pleasure of His Majesty, his Heirs or Successors to make a Grant for any of the Purposes aforesaid, it shall and may be lawful for the Lord High Treasurer, or the Commissioners of the Treasury, or any Three of them, to grant a Warrant under his or their Hand or Hands to any such Person or Persons, or Body or Bodies Politic Corporate, specifying the Premises so to be vested in such Person or Persons, Body or Bodies Politic or Corporate, as aforesaid, which Warrant shall be inrolled in the Office of the Auditor of the Land Revenue for the Division or County within which the Premises shall be situate, and also in the Office of the Commissioners of His Majesty's Woods, Forests and Land Revenues, or in the Office of the Surveyor General His Majesty's Land Revenue for the time being; and such Auditor, and such Commissioners, or Surveyor General having enrolled the said Warrant, shall certify such Inrolment at the Foot or on the Back thereof under their Hands, and return the said Warrant to the Grantee or Grantees of the Premises therein named, and from and immediately after such Inrolment and thenceforth for ever the respective Grantees named in such Warrants, and their Heirs and Successors, shall by force of this Act be adjudged, deemed and taken to be in the actual Seisin and Possession of the Premises in the said Warrants specified, and shall hold and enjoy the same peaceably and quietly, freed and discharged of and from all Claims and Demands which can or may be made by his Majesty, his Heirs or Successors, or by any Person or Persons lawfully claiming by, from or under him or them, and of and from all manner of Incumbrances whatsoever as fully and amply to all Intents and Purposes as His Majesty, his Heirs or Successors, might or could have held or enjoyed the same: Provided always, that nothing in this Act contained shall extend, or be construed to extend to enable His Majesty, his Heirs and Successors, to grant more than Five Acres in any One Grant for any of the Purposes aforesaid.

Proviso.

SCHEDULES to which this Act refers.

(A)

FOR AN EXCHANGE OF FREEHOLD LANDS.

BE it known, That the Right Honourable *A. B.* and *C.* Commissioners of His Majesty's Woods, Forests and Land Revenues, being duly authorized by the Lords Commissioners of His Majesty's Treasury, in Exercise of the Powers vested in them by an Act [*insert the Title of this Act*], do by these Presents on Behalf of His Majesty, his Heirs and Successors, give, grant and convey to *X. Y.* his Heirs and Assigns, All that Piece or Parcel of Land coloured in the Map or Plan annexed to these Presents, containing Acres Roods and Perches; and abutting, &c. [*as the case may be*]: And the said *X Y.* doth by these Presents, for himself and his Heirs, by the Direction of the said Commissioners of His Majesty's Woods, Forests and Land Revenues, give, grant and convey unto His said Majesty King George the Third, and his Heirs and Successors, all that Piece or Parcel of Land coloured in the said Map or Plan, in Exchange for the Piece or Parcel of Land distinguished by a Colour in the said Map or Plan: Provided always, That if His said Majesty, his Heirs or Successors,

or the said *X. Y.* his Heirs or Assigns, shall at any time without their respective wilful Default, be evicted of the same Piece or Parcel of Land hereby respectively given, granted and conveyed to him or them respectively as aforesaid, it shall be lawful for the Party or Parties so evicted to enter into the Piece or Parcel of Land contracted by him to be given in Exchange as aforesaid, and to hold and enjoy the same in his or their former Estate, in the same manner as if the Exchange hereby made had not been made. In Witness, &c. No. 39. 52 G. III. c. 161.

(B.)

FORM OF DEED FOR AN EXCHANGE OF LEASEHOLD PREMISES.

BE it known, That the Right Honourable *A. B* and *C.* Commissioners of His Majesty's Woods, Forests and Land Revenues, being duly authorized by the Lords Commissioners of His Majesty's Treasury, in Exercise of the Powers vested in them by an Act [*insert the Title of this Act.*], do by these Presents on Behalf of His Majesty, his Heirs and Successors, give, grant and demise unto *X. Y.* his Executors, Administrators and Assigns, for the Term of Years, commencing from the Day next before the Day of the Date of these Presents, All that Piece or Parcel of Land coloured in the Map or Plan annexed to these Presents, containing Acres, Roods and Perches, and abutting, &c. [*as the case may be*] in Exchange for the Piece or Parcel of Land coloured in the said Map or Plan, containing Acres, Roods and Perches, and abutting, &c. [*as the case may be*]: And the said *X. Y.* doth by these Presents, for himself, his Executors and Administrators, and by the Direction of the said Commissioners of His Majesty's Woods, Forests and Land Revenues give, grant and surrender to His Majesty King GEORGE the Third, his Heirs and Successors, all that the said Piece or Parcel of Land coloured in the said Map or Plan, and which is now vested in him the said *X. Y.* under a Lease from the Crown, for a Term of Years, of which Years are yet to come and unexpired, in Exchange for the said Piece or Parcel of Land, distinguished by a Colour in the said Map. In Witness, &c.

(C.)

FORM OF CONVEYANCE.

THESE are to witness, That in Consideration of the Sum of paid by *A. B.* to the Commissioners of Woods, Forests and Land Revenues, [*or,* to the Surveyor General of His Majesty's Woods, Forests, &c. *as the case may be*] for and on account of His said Majesty, *C. D.* and *E. F.*, Two of the Commissioners of His Majesty's Woods, Forests and Land Revenues, being duly authorized by the Lords Commissioners of His Majesty's Treasury, do, for and on the Behalf of His said Majesty, by these Presents grant, bargain and sell unto the said *A. B.* his Heirs and Assigns, [*describe the Parcels of Land, &c. sold*] To have and to hold, [*the said Parcels, &c.*] hereby bargained and sold, and all Benefit and Advantage thereto belonging, unto and to the Use of the said *A. B.* his Heirs and Assigns for ever. In Witness whereof, the said *C. D. E. F.* and *G. H.* have hereunto set their Hands and Seals, this Day of in the Year of our Lord,

No. 39.
52 G. III. c. 161.

(D.)

FORM OF LEASE.

THESE are to witness, That in Consideration of the Annual Rent or Sum of hereinafter reserved to be paid by *X. Y.* of, &c. the Commissioners of His Majesty's Woods, Forests and Land Revenues, [*or*, the Surveyor General of His Majesty's Woods and Forests, *as the case may be*] by the Authority of the Lords Commissioners of His Majesty's Treasury, for and on Behalf of His Majesty, doth, [*or*, do] by these Presents, grant, demise, lease and to farm let unto the said *X. Y.* his Executors, Administrators and Assigns, All [*describe the Parcels of Land*, &c.] To have and to hold the said Parcels, &c. hereby demised, and all Benefit and Advantage thereto belonging, unto him the said *X. Y.* his Executors, Administrators and Assigns, for and during the Term of Years, yielding and paying by Half yearly Payments to the said Surveyor General, or to the said Commissioners [*as the case may to be*] for the time being, the Annual Rent or Sum of In Witness whereof the said and the said *X. Y.* have hereunto set their Hands and Seals, this Day of in the Year, &c. Witness.

No. 40.

P. 54 George III. c. 70.—An Act for the further Improvement of the Land Revenue of the Crown. (1)

[17th *June*, 1814.]

54 Geo. III. c. 70

I. [All Balances of Rent of Crown Lands to be paid to Commissioners under 53 G. 3, c. 121.] (2)

II. [Receivers to have the same Allowances on Payment to Commissioners as if paid into the Consolidated Fund.]

Monies arising from Fines of Leases, Sale of Rents and Lands, Enfranchisement, &c to by paid to Commissioners under 53 G. 3, c. 121.

III. And be it further enacted, That from and after the passing of this Act all and every Sum and Sums of Money which shall or may arise, for or in respect of any Fine or Fines for the Renewal or Grant of any Lease or Leases of any Manors, Messuages, Lands, Tenements, or Hereditaments, of or belonging to his Majesty, his Heirs or Successors, and also all and every Sum and Sums of Money which shall or may arise or be produced from the Sale of any Fee-farm Rents, or from the Sale, Enfranchisement, or Equality of Exchange of any Manors, Messuages, Lands, Tenements, Rights, or Hereditaments, of or belonging to his Majesty, his Heirs or Successors, under or by virtue of the Provisions of the said recited Act of the Thirty-fourth Year of the Reign of his present Majesty, intituled *An Act for the better Management of the Land Revenue of the Crown, and for the Sale of Fee-farm and other unimprovable Rents*, and of the said recited Act of the Forty-eighth Year of his present Majesty, intituled *An Act to improve the Land Revenue of the Crown in* England, *and also of his Majesty's Dutchy of* Lancaster, shall from Time to Time be paid and made over by the several Lessees and other Person or

(1) The Contents of the greater Part of this Act are not referable to the Purposes of the present Collection, and such Parts therefore are only inserted as are immediately connected with some of the preceding Numbers.

(2) For making a Communication from Mary-le-Bone Park to Charing Cross.

No. 40.
51 Geo. III. c. 21.

Persons liable to pay or authorized to receive the same, unto the said Commissioners for executing the said recited Act of the Fifty-third Year of the Reign of his present Majesty, to be applied by them for and towards the carrying the several Purposes thereof into Execution, until the said Sums thereby authorized to be raised shall have been raised and thereafter fully paid and satisfied; any Thing in any Act or Acts of Parliament to the contrary notwithstanding.

IV. [Receipts of Commissioners to discharge Receivers, Lessees, Purchasers, &c.]

V. [Act of any Two Commissioners to be valid.]

VI. [Commissioners of the Treasury empowered to transfer certain Sums to the Commissioners under 53 G. 3, c. 121.]

VII. [Monies to arise from the Sale of Estates to the Duke of York, and the Dividends of Annuities arising from Monies under the Land Tax Acts, to be paid to the Commissioners, except Sums required by the Treasury.]

Sale of Land in Wales.

VIII. And be it further enacted, That from and after the passing of this Act it shall and may be lawful for the Commissioners of his Majesty's Woods, Forests, and Land Revenues, or the Surveyor General of his Majesty's Woods, Forests, Parks, and Chaces for the Time being, with the Approbation of the said Lord High Treasurer, or Commissioners of his Majesty's Treasury for the Time being, or any Three of them, to contract and agree for the Sale of, and absolutely to make sale and dispose, from Time to Time, of any Plot or Plots, Parcel or Parcels of Waste Lands, situate, lying and being in any Place or Places within the Principality of *Wales*, and which shall have been allotted, or may hereafter be allotted to his Majesty, his Heirs or Successors, under or by virtue of any Act or Acts of Parliament for inclosing Lands passed subsequently to the passing of the said recited Act of the Thirty-fourth Year of the Reign of his present Majesty, intituled *An Act for the better Management of the Land Revenue of the Crown, and for the Sale of Fee-farm and other unimproveable Rents*; and which Act or Acts of Inclosure does or do not contain any special Authority or Provision for the Sale of such Plot or Plots, Parcel or Parcels of Waste Lands, for the best Prices or Considerations in Money which the said Commissioner of his Majesty's Woods, Forests, and Land Revenues, or the said Surveyor General, shall be able to procure for the same.

IX. [Application of Monies arising from Sale of Lands in *Wales*.]

X. [Certain Parcels of Waste Land, Part of the Forest of Dean, may be sold.]

Treasury empowered to determine what are small Quantities of Land under 48 G. 3, c. 73.

XI. And whereas under the Provisions of the said recited Act of the Forty-eighth Year of the Reign of his present Majesty, intituled *An Act to improve the Land Revenue of the Crown in* England, *and also of his Majesty's Dutchy of* Lancaster, the Surveyor General of the Land Revenues of the Crown for the Time being, was empowered to sell Lands belonging to the Crown dispersed in small Quantities, and intermixed with the Property of Individuals, and lying remote from other Property belonging to the Crown: And whereas Doubts have arisen, what are to be considered small Quantities of Land within the Scope and Meaning of the said Act; be it therefore enacted, That it shall and may be lawful to and for the said Lord High Treasury, or the said Commissioners of his Majesty's Treasury for the Time being, or any Three of them, and he or they is and are hereby fully authorized and empowered, by any Warrant or Writing under their Hands, to ascertain, determine, and declare, what Lands are comprized within the said recited Act, and are thereby made saleable under the Denomination of Lands dispersed in small Quantities, and intermixed with

No. 40. 54 Geo. III. c. 70. the Property of Individuals, and lying remote from other Property belonging to the Crown.

XII. [After Money raised, the Monies to arise from Sale of Manorial Rights, Quit Rents, &c. are to be laid out in Lands for the Growth of Timber.]

XIII. [Purchasers of Premises to have Certificates and Receipts for the Purchase Money, which Certificates shall be inrolled in the Office of the Auditor of the Land Revenue, &c.]

XIV. [Penalty for neglect in not paying the Purchase Money into the Bank within the Time limited.]

XV. [Commissioners to apply the Monies arising from Sale of Bank Annuities to the Purposes of the Act 53 G. 3, c. 121.]

[Sections 16, 17, 18, 19, 20, and 21, relate to the Accounts and Proceedings of the Commissioners under 53 Geo. 3, c. 121.]

XXII. [The Treasury may authorize the Application of any Part of the Monies paid for the Purchase of Lands, for the Cultivation of Timber.]

XXIII. [Transferring Account.]

XXIV. [Powers of 50 G. 3, c. 65, extended to the Accounts under this Act.]

[Sections 25 to 38 relate to raising Money by Commissioners upon Loan.]

XXXIX. [Bodies Politick, &c. Tenants for Life or in Tail, Committees, Guardians, and Trustees for incapacitated Persons or Persons under Disabilities, enabled to contract and to convey Lands to his Majesty to be appropriated to the Growth of Timber.]

XL. [Lands to be valued upon Oath, and not to be sold below the Valuation.]

XLI. [Purchased Lands to be conveyed to his Majesty according to the Form in Schedule A.]

XLII. [Ecclesiastical Persons entitled to Fines to be compensated for the Deprivation thereof by means of such Sales.]

XLIII. [Such Parts of the Monies as are to be laid out in the Purchase of other Lands, are to be invested or disposed of in the mean Time according to the Directions in the General Inclosure Act, 41 Geo. III. c. 109.]

XLIV. [Bodies Politic or Corporate, Guardians, Committees, and Trustees, acting for Persons under Disabilities, enabled to contract with the Commissioners of His Majesty's Woods, for the Sale of Fuel Rights.]

XLV [Sales by Tenant for Life.]

XLVI. [This Act not to restrain or affect Powers of Sale or Exchange given by any other Act.]

XLVII. [Recital of 52 Geo. III. c. 161.—All Leases granted by virtue thereof shall be exempt from Stamp Duty.]

No. 41.

52 George III. c. 134.—An Act for altering the Rate at which the Crown may exercise its Right of Pre emption of Ore in which there is Lead. [4th *July*, 1815.

55 G. III. c. 134. 5 W. & M. c. 6. WHEREAS by an Act passed in the Fifth Year of the Reign of their late Majesties King William and Queen Mary, intituled *An Act to prevent Disputes and Controversies concerning Royal Mines*,* Owners of Mines within the Kingdom of *England*, Dominion

* See this Act ante Class I. No. 19. The present Act had not passed at the Time of printing that Part of the Work.

No. 41.
52 G. III. c. 131

of *Wales*, or Town of *Berwick-upon-Tweed*, wherein any Ore should be discovered, and in which there is Copper, Tin, Iron, or Lead, are authorized to hold and enjoy the same Mines and Ore, and to continue in Possession thereof, and to dig and work the said Mines, notwithstanding that such Mines or Ore should be pretended or claimed to be Royal Mines, subject to a Right in Their Majesties, Their Heirs and Successors, and all claiming any Mines under them, to have the Ore of any such Mines in any Part of the said Kingdom of *England*, Dominions of *Wales* or Town of *Berwick-upon-Tweed*, other than Tin Ore in the Counties of *Devon* and *Cornwall*, paying to the Proprietors or Owners of the said Mines certain Rates contained in the said Act, in the Manner and according to the Limitations specified in the said recited Act: And whereas the Rate therein directed to be paid for all Ore wherein there is Lead is in consequence of the Lapse of Time and Change of Circumstances since the passing of the said recited Act become inadequate to the increased Expence of raising the same, and it is reasonable therefore that the same should be increased: May it therefore please Your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act the Rate which shall be paid by His Majesty, His Heirs and Successors, and all claiming any Royal Mines under them, in exercising the Right of Pre-emption given them by the said recited Act, as far as respects any Ore wherein there is Lead, shall be Twenty-five Pounds *per* Ton for all Ore washed, made clean, and Merchantable, wherein there is Lead, instead of the Rate of Nine Pounds *per* Ton as by the said recited Act is directed; any Thing in the said recited Act to the contrary notwithstanding; and such increased Rate shall be paid, subject to the Provisions and according to the Regulations contained in the said recited Act, and now in force, with regard to the said original Rate of Nine Pounds *per* Ton.

25l. per Ton instead of 9l. to be the Rate at which his Majesty and others claiming Royal Mines may exercise their Right of Preemption of Ore in which there is Lead.

End of Part Second.

ADDENDA.

ADDENDA.

PART I.—CLASS I.

ALIENS, DENIZENS, AND NATURALIZATION.

No. 1.

56 Geo. III. c 86.—An Act for establishing Regulations respecting Aliens arriving in or resident in this Kingdom, in certain Cases, for Two Years from the passing of this Act, and until the End of the Session of Parliament in which the said Two Years shall expire, if Parliament shall be then sitting.

PART I.—CLASS II.

STATUTES RELATING TO THE CLERGY.

No. 1.

55 Geo. III. c. 147.—An Act for enabling Spiritual Persons to exchange the Parsonage or Glebe Houses or Glebe Lands, belonging to their Benefices, for others of greater Value, or more conveniently situated for their Residence and Occupation; and for annexing such Houses and Lands, so taken in Exchange, to such Benefices as Parsonage or Glebe Houses and Glebe Lands, and for purchasing and annexing Lands to become Glebe in certain Cases; and for other Purposes.

[6th *July*, 1815.]

'WHEREAS in divers Ecclesiastical Benefices, Perpetual Curacies and Parochial Chapelries, the Glebe Lands, or some Part or Parts thereof, lie at a Distance from and are inconvenient to be occupied with the Parsonage or Glebe Houses, and the Parsonage or Glebe Houses of divers Benefices, Perpetual Curacies and Parochial Chapelries, are mean and inconvenient; and it would often tend much to the Comfort and Accommodation and thereby also to promote the Residence of the Incumbents of such Benefices, Perpetual Curacies and Parochial Chapelries, if the Gl[illegible]Lands 55 Geo. III. c. 147

No 1.
52 Geo. III. c. 147

'and Parsonage or Glebe Houses thereof could be by Law exchanged 'for other Lands of greater Value, or more conveniently situated, 'and for other and more convenient Houses: And Whereas there are 'also divers Lands and Tenements which have been accustomed to be 'granted or demised by the Incumbent for the Time being of certain 'Ecclesiastical Benefices, Perpetual Curacies or Parochial Chapelries, 'for One, Two or Three Lives, or for a Term or Terms of Years 'absolutely or determinable on a Life or Lives, as being holden by 'Copy of Court Roll or otherwise, under some Manor or Lordship 'belonging to such Benefices, Perpetual Curacies or Parochial Cha-'pelries, and it would therefore be advantageous to the said Benefices 'if the same Lands and Tenements, or some of them, or some Part 'thereof, were annexed as Glebe to the Living or Benefice to which 'they belong;' May it therefore please your Majesty that it may be enacted; and be it enacted by the King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That, from and after the passing of this Act, it shall be lawful for the Parson, Vicar or other Incumbent for the Time being, of any Ecclesiastical Benefice, Perpetual Curacy or Parochial Chapelry, by Deed indented, and to be registered in manner hereinafter mentioned, and with the Consent of the Patron of such Benefice, Perpetual Curacy or Parochial Chapelry, and of the Bishop of the Diocese wherein the same is locally situate (to be signified as hereinafter is mentioned), to grant and convey to any Person or Persons, and to his, her or their Heirs and Assigns, or otherwise, as he or they shall direct or appoint, or to any Corporation, Sole or Aggregate, and his or their Successors, the Parsonage or Glebe House, and the Outbuildings, Yards, Gardens and Appurtenances thereof, and the Glebe Lands, and any Pastures, Feedings or Rights of Common or Way appendant, appurtenant or in gross, or any or either of such House, Outbuildings, Yards, Gardens and Glebe Lands, Pastures, Feedings or Rights of Common or Way, or any Part or Parts thereof, belonging to any such Benefice, Perpetual Curacy or Parochial Chapelry, in lieu of and in exchange for any House, Outbuildings, Yards, Gardens and Appurtenances, and any Lands, or any or either of them, whether lying within the local Limits of such Benefice, Perpetual Curacy or Parochial Chapelry or not, but so as that the same be situate conveniently for actual Residence or Occupation by the Incumbent thereof, the same also being of greater Value or more conveniently situated than the Premises so to be given in Exchange, and being of Freehold Tenure, or being Copyhold of Inheritance, or for Life or Lives, holden of any Manor belonging to the same Benefice, and also for the Parson, Vicar or Incumbent for the Time being of the same Benefice, Perpetual Curacy or Parochial Chapelry, by the same or a like Deed, and with the like Consent, and testified as aforesaid, to accept and take in Exchange to him and his Successors for ever, from any Person or Persons, or Corporation Sole or Aggregate, any other House, Outbuildings, Yards, Gardens, Easements and Appurtenances, and any other Lands, or any or either of such House, Outbuildings, Yards, Gardens, Lands, Easements and Appurtenances, the same respectively being of Freehold Tenure, or being Copyhold of Inheritance, or for Life or Lives, holden of any Manor belonging to the same Benefice, and being of greater Value or more conveniently situated, in lieu of and in Exchange for such Parsonage or Glebe House, Outbuildings, Yards, Gardens, Glebe Lands and Appurtenances, and such Pastures, Feedings and Rights of Common or Way, or [illegible] either of them, so to be granted and conveyed, and which [illegible] Outbuildings, Yards, Gardens, Lands and Appurtenances

Power to exchange Parsonage Houses and Glebe Lands for other Houses and Lands.

No. 1.
53 Geo III c. 147

so to be accepted and taken in Exchange, by any Parson, Vicar or other Incumbent, shall for ever, from and after such Grant and Conveyance thereof, be the Parsonage and Glebe House and Glebe Lands and Premises of the said Benefice, Perpetual Curacy or Parochial Chapelry, to all Intents and Purposes whatsoever, and shall become annexed to the said Benefice, Perpetual Curacy or Parochial Chapelry, to all Intents and Purposes whatsoever, and be holden and enjoyed by such Incumbent and his Successors accordingly, without any Licence or Writ of *Ad quod damnum*; and that the Whole, or any Part or Parts of the said House, Outbuildings, Lands and Premises so to be annexed, which before such Annexation were of Copyhold Tenure, shall for ever, from and after such Annexation, become and be of Freehold Tenure, the Statute of Mortmain, or any other Statute or Law to the contrary notwithstanding: Provided always, that nothing in this Act contained shall extend, or be construed to authorize the granting or conveying in Exchange by any Parson, Vicar or other Incumbent, either at one and the same Time, and by one and the same Incumbent, or at different Times, and by several Incumbents, and in several Portions, any greater Quantity in the Whole than Thirty Statute Acres of the Glebe Lands of any Benefice, Perpetual Curacy or Parochial Chapelry: Provided also, that in all Cases when such Exchange shall be made by any Owner or Owners having any less Estate or Interest than in Fee Simple of or in the Messuage, Buildings, Lands and Premises so to be by him, her or them granted or conveyed in Exchange, or being any Corporation Aggregate or Sole, or Person or Persons under any legal Disability, the Parsonage House, Outbuildings and Glebe Lands respectively to be so taken in Exchange as aforesaid, shall at the Time of making such Exchange be of equal Value with, or not of less Value than the said Messuage, Buildings, Lands and Premises respectively so to be granted and conveyed in Exchange to such Parson, Vicar or other Incumbent.

Writ of ad quod damnum.

Proviso.

Proviso.

II. Provided always, That in all Cases where the Lands or any Part or Parts thereof to be conveyed in Exchange to any Parson, Vicar or Incumbent, and to be annexed as Glebe to any Benefice, Perpetual Curacy or Parochial Chapelry, under the Authority of this Act, shall either separately or jointly with other Lands or Tenements be, at the Time of such Conveyance by any means whatsoever, exempt or discharged from the Render of Tithes in Kind, or subject to or covered by any Modus, Composition Real or Prescription in lieu of Tithes in Kind, then the Lands or Premises to be conveyed in Exchange by such Parson, Vicar or Incumbent, and which before such Exchange were Glebe of or belonging to the same Benefice, Perpetual Curacy or Parochial Chapelry, shall (unless it be agreed between the Parties to such Exchange that the same shall become and be subject to the Render or Payment of Tithes in Kind) from and immediately after such Conveyance in Exchange (in Case such first mentioned Lands are situated in the same Parish, Vicarage or Parochial Chapelry, with the said Lands or Premises before Glebe thereof, or belonging thereto, but not otherwise) become and be either exempt or discharged from Tithes in Kind, in like manner with or (as the Case may be) subject to or covered by the same Modus, Composition Real or Prescription in lieu of Tithes in Kind, as the Lands so to be conveyed in Exchange to the said Parson, Vicar or Incumbent, were exempt or discharged from, or subject to or covered by, before such Exchange was made.

Premises given in Exchange subject to same Tithes, &c. as those taken in Exchange (except in certain Cases)

III. Provided also, and be it further enacted, That no Incumbent of any Benefice, Perpetual Curacy or Parochial Chapelry, wherein or in respect whereof any such Exchange as is autho[illegible] by this Act shall have taken place, or his Successors, shall at any [illegible] there-

After Exchange Incumbent [illegible]

No. 1.
55 Geo. III. c. 147

after be evicted or ejected from the peaceable and quiet Possession and Enjoyment of the House, Outbuildings, Lands and Premises, or any of them, which shall have been granted and conveyed in Exchange to such Incumbent, according to the Provisions of this Act, by or by reason or in consequence of any Person or Persons, or Corporation Sole or Aggregate, claiming Right thereto, through any Title prior to that of or through any Defect of Title of the Person or Persons, or Corporation Sole or Aggregate, granting or conveying the same in Exchange; but nevertheless that it shall and may be lawful for such Person or Persons, or Corporation, claiming such Right, and he, she or they is and are hereby authorized and empowered to have, use, exercise and enjoy all such and the same Powers and Remedies in trying his, her or their Right to and in obtaining and recovering Possession of any House, Outbuildings, Land and Premises, or any of them, which shall have been granted in Exchange by any such Incumbent, as the Person or Persons or Corporation Sole or Aggregate, so claiming would, in case this Act had not been made, have been enabled to use, exercise and enjoy in trying the Right to and in recovering and obtaining Possession of the House, Outbuildings, Lands and Premises, or any of them, in Exchange for which the same shall have been so granted and conveyed by any such Incumbent, under the Authority of this Act.

Power to annex Premises belonging to Manors, and heretofore grantable and demisable as Copyhold or otherwise.

IV. And be it further enacted, That, from and after the passing of this Act, it shall and may be lawful to and for the Parson, Vicar or other Incumbent of any Ecclesiastical Benefice, Perpetual Curacy or Parochial Chapelry, of or to which Benefice, Perpetual Curacy or Parochial Chapelry, any Manor or Lordship is Parcel or appurtenant, and as Parcel of or belonging to which Manor or Lordship any Lands or Tenements are or have been usually granted or demised, or grantable or demisable by Copy of Court Roll, or otherwise, for any Life or Lives, or for any Term or Number of Years absolutely or determinable on any Life or Lives, by Deed indented (and to be registered as hereinafter mentioned) with the Consent of the Patron and Bishop (to be testified as hereinafter mentioned) to annex to the said Benefice, Perpetual Curacy or Parochial Chapelry, as and for Glebe Land, or Parsonage or Glebe House or Houses and Buildings thereof, all or any Part or Parts of such Lands or Tenements, whether lying within the Local Limits of such Benefice, Perpetual Curacy or Parochial Chapelry, or not, and that from and after such Annexation the said Lands and Tenements so annexed shall cease to be thereafter grantable or demisable by any Incumbent of the said Benefice, Perpetual Curacy or Parochial Chapelry (otherwise than as Glebe Lands are or shall be by Law grantable or demisable) but shall from thenceforth be and become, and be deemed and taken to be the Glebe Lands and Parsonage or Glebe House or Houses of and annexed to such Benefice, Perpetual Curacy or Parochial Chapelry, for ever, to all Intents and Purposes whatsoever, without any Licence or Writ of *Ad quod damnum*; the Statute of Mortmain, or any other Statute or Law to the contrary notwithstanding: Provided always, that no such Annexation shall in any wise annul, determine or affect any Grant or Demise then previously made and actually existing of the said Lands and Tenements so to be annexed as last aforesaid.

Such Annexations not to annul existing Grants or Demises.

'V. And Whereas it is expedient to enlarge and amend the Laws 'now in being for providing Parsonage Houses with suitable Out- 'buildings and other Accommodations for the Residence of the Clergy, 'by way of Benefaction;' Be it further enacted, That where there shall be no existing Parsonage or Glebe House on any Ecclesiastical Benefice, Perpetual Curacy or Parochial Chapelry, or where the existing Parsonage or Glebe House, or the Outbuildings thereof, on

Power to annex Parsonage Houses, &c. by Benefaction.

any such Benefice, Perpetual Curacy or Parochial Chapelry, shall be inconvenient or too small or incommodiously situate, it shall be lawful from and after the passing of this Act for any Person or Persons, being Owners in Fee Simple, or for any Corporation Sole or Aggregate, with or without Confirmation, as the case may require, and by and with such Consent, and to be signified as hereinafter mentioned of the Incumbent, Patron and Bishop, to give, grant and convey, by Deed indented, and to be registered as hereinafter is mentioned to any Parson, Vicar or other Incumbent of such Benefice, Curacy or Chapelry, for the time being, who shall also have Power to accept the same, any Messuage, Outbuildings, Yard, Garden, Orchard and Croft, or any of them, with their Appurtenances, or any Right of Way, or other Easement, whether lying within the Local Limits of such Benefice, Perpetual Curacy or Parochial Chapelry or not, but so as that the same be conveniently situate for actual Residence or Occupation by the Incumbent thereof; and which Messuage, Outbuildings, Yard, Garden, Orchard and Croft, with their Appurtenances or Right of Way, or other Easement, shall for ever from and after such Grant and Conveyance thereof be and become annexed to and be deemed and taken to be the Parsonage or Glebe House, Outbuildings, Yard, Garden, Orchard, Croft, Appurtenances and Right of Way, or other Easement of the said Benefice, Curacy or Chapelry, to all Intents and Purposes whatsoever, and be holden and enjoyed by the said Incumbent and his Successors accordingly, without any Licence or Writ of *Ad quod damnum*; the Statute of Mortmain, or any other Statute or Law to the contrary notwithstanding; and from and after such Grant and Annexation it shall be lawful for the Incumbent for the time being of the said Benefice, Curacy or Chapelry, to which such Grant and Annexation shall have been made, (with the Consent in Writing of such Patron and Bishop under their Hands and Seals to be duly registered as hereinafter is mentioned,) to take down and remove any Parsonage or Glebe House, and Outbuildings, or any Part thereof, which before such Annexation belonged to the said Benefice, Curacy or Chapelry (if the same or Part thereof cannot be better applied to the permanent Advantage of such Benefice, Curacy or Chapelry,) and with the like Consent as aforesaid, to apply the Materials, or the Produce thereof, if sold, towards some lasting Improvement of the said Benefice, Curacy or Chapelry: Provided always, that nothing herein contained shall extend to enable any Persons being Infants or Lunatics, or Femes Covert without their Husbands, to make any such Gift, Grant or Conveyance; any thing in this Act contained to the contrary in any wise notwithstanding.

No. 1. 55 Geo. III. c. 147

Writ of Ad quod damnum.

Proviso.

'VI. And Whereas an Act was passed in the Seventeenth Year 'of the Reign of His present Majesty, intituled *An Act to promote 'the Residence of the Parochial Clergy, by making Provision for the 'more speedy and effectual building, rebuilding, repairing or pur'chasing Houses, and other necessary Buildings and Tenements, for 'the Use of their Benefices*: And Whereas one other Act was passed 'in the Twenty-first Year of the Reign of His present Majesty, in'tituled, *An Act to explain and amend an Act made in the Seven'teenth Year of the Reign of His present Majesty, intituled An Act 'to promote the Residence of the Parochial Clergy, by making Pro'vision for the more speedy and effectual building, rebuilding, repair'ing or purchasing Houses, and other necessary Buildings and Tene'ments, for the Use of their Benefices*: And Whereas there are many 'Ecclesiastical Benefices, Perpetual Curacies and Parochial Chapelries 'to which no Glebe Land, or only a small Portion of Glebe Land is 'belonging; and it is therefore expedient to enable the making Pro-

17 Geo. III. c. 53.

21 Geo. III. c. 66.

No. 1.
55 Geo. III. c. 147

'vision by Purchase, for the Annexation of Glebe Land to such Be-'nefices, Perpetual Curacies and Parochial Chapelries;' Be it therefore further enacted, That, from and after the passing of this Act, it shall be lawful for the Parson, Vicar or other Incumbent for the time being, of any Ecclesiastical Benefice, Perpetual Curacy or Parochial Chapelry, the existing Glebe whereof shall not exceed Five Statute Acres, with the Consent of the Patron and Bishop, to be signified as hereinafter mentioned, to purchase any Lands not exceeding in the whole Twenty Statute Acres, with the necessary Outbuildings thereon, whether being within the Local Limits of the said Benefice, Perpetual Curacy or Parochial Chapelry, or not, but so as that the same be situate conveniently for building a Parsonage or a Glebe House, and Outbuildings, and for Gardens and Glebe thereof, or for any of the said Purposes, and for actual Residence and Occupation by the Incumbent thereof, such Land being of Freehold Tenure, or being Copyhold of Inheritance, or for Life or Lives, holden of any Manor or Lordship belonging to the same Benefice, Perpetual Curacy or Parochial Chapelry; and which Lands so purchased shall for ever, from and after the Grant and Conveyance thereof, be and become annexed to and Glebe of such Benefice,, Perpetual Curacy or Parochial Chapelry, to all Intents and Purposes whatsoever, and be holden and enjoyed by such Incumbent, and his Successors accordingly, without any Licence or Writ of *Ad quod damnum*; and the Whole or any Part or Parts of the said Lands, which before such Annexation were or was of Copyhold Tenure, shall for ever, from and after such Annexation, become and be of Freehold Tenure; the Statute of Mortmain or any other Statute or Law to the contrary notwithstanding.

Power to purchase Land,

to be annexed to Benefices as Glebe Land thereof.

Copyhold Land so purchased holden as Freehold;

VII. And, for the better effectuating such Purchases as aforesaid, be it further enacted, That it shall be lawful for such Parson, Vicar or other Incumbent for the time being, with the Consent of the Patron and Bishop (to be signified as hereinafter is mentioned,) to borrow and take up at Interest (over and besides the Monies authorized to be borrowed under the Authority and for the Purposes of the said recited Act of the Seventeenth Year of the Reign of His present Majesty) such Sum or Sums of Money as shall be certified by a Valuation upon Oath of some skilful and experienced Surveyor to be the true and just Value of the said Lands at the time of the Purchase thereof, not exceeding Two Years clear Income and Produce of such Benefice, Perpetual Curacy or Parochial Chapelry, after deducting all Taxes and other Outgoings whatever, except the Salary to the Assistant Curate (if any); and as a Security for Repayment of the Money so to be borrowed, to mortgage the Tithes, Rents and other Profits and Emoluments of or belonging to such Benefice, Perpetual Curacy or Parochial Chapelry, to any Person or Persons who shall advance such Money by One or more Deed or Deeds (to be registered as hereinafter mentioned) for the Term of Twenty-five Years, or until the Principal Money so to be borrowed, with Interest for the same, and all Costs and Charges attending the Recovery thereof, shall be fully paid off and satisfied; which Mortgage Deed or Deeds shall bind, as well such Parson, Vicar or other Incumbent of such Benefice, Perpetual Curacy or Parochial Chapelry, executing such Mortgage or Mortgages, as also his Successors, and a Counterpart thereof shall be executed by the Mortgagee or Mortgagees, and be kept by the Incumbent; and the Parson, Vicar or Incumbent for the time being of such Benefice, Perpetual Curacy or Parochial Chapelry. shall and he is hereby required to pay or cause to be paid to the Mortgagee or Mortgagees yearly and every Year, as the same shall become due, or within One Month afterwards, as well the Interest of the Principal Money se-

and by Mortgage of Tithes, &c. to raise Sums for such Purchase.

17 Geo. III. c. 53.

not exceeding Two Years net Income.

cured by such Mortgage or Mortgages, as also the further Sum of Five Pounds *per Centum per Annum* of the Principal Money originally advanced on such Mortgage or Mortgages; and that every Incumbent who shall not reside Twenty Weeks in every Year upon such Benefice, Perpetual Curacy or Parochial Chapelry, computing each Year from the Date of the First or only Mortgage Deed, shall and he is hereby required, instead of the said Sum of Five Pounds *per Centum per Annum*, to pay within the Period aforesaid the Sum of Ten Pounds *per Centum per Annum* of the Principal Money originally advanced on such Mortgage or Mortgages, until the whole of such Principal Money, with the Interest, Costs and Charges shall be fully paid off and discharged; and that every such Incumbent who shall pay only Five Pounds *per Centum per Annum* of such Principal Money shall, at the time of Payment thereof, produce and deliver to the Mortgagee a Certificate under the Hands of Two Rectors, Vicars or other Officiating Ministers of some Parishes near adjoining, signifying that he had resided Twenty Weeks upon the said Benefice, Perpetual Curacy or Parochial Chapelry, within the Year for which such Payment became due; and in Default of Payment of the Principal, Interest, Costs and Charges in manner aforesaid, the Bishop shall have Power to sequester the Profits of such Benefice, Perpetual Curacy or Parochial Chapelry, until such Payment shall be made; and if at any time or times the said Principal and Interest, or any Part thereof, shall be in Arrear and unpaid for the Space of Forty Days next after the yearly Day of Payment whereon the same shall have become due, it shall be lawful for the Mortgagee or Mortgagees, and his, her or their Executors, Administrators or Assigns, to recover the same, or such Part thereof as shall be so unpaid, and the Costs and Charges attending such Recovery, by Distress and Sale, in such manner as Landlords are or shall be by Law authorised to recover Rents in Arrear; and in order that the Payment of the same Principal and Interest may, in cases of Avoidance by Death or otherwise, be justly and equitably ascertained and adjusted between the Parson, Vicar or Incumbent avoiding such Benefice, Perpetual Curacy or Parochial Chapelry, or his Representatives, and his Successor, in such Proportions as the Profits of such Benefice, Perpetual Curacy or Parochial Chapelry, shall have been received by them respectively for the Year in which such Death or Avoidance shall happen, such Payment shall in case any Difference shall arise in settling the Proportions thereof, be ascertained and determined by two indifferent Persons, the one to be named by the Person making such Avoidance, or his Representatives in case of his Death, and the other by the said Successor; and in case such Nominees shall not be appointed within the Space of Two Calendar Months next after such Death or Avoidance, or in case they shall not agree in settling such Proportions within the Space of One Calendar Month after they shall have been appointed, the same shall be determined by some neighbouring Clergyman to be nominated by the Bishop, whose Determination shall be final and conclusive between the Parties.

No. 1. 55 Geo. III. c. 147

Governors of Queen Anne's Bounty empowered to lend Money.

VIII. And be it further enacted, That, for promoting the Purposes of this Act, it shall and may be lawful for the Governors of the Bounty of Queen ANNE for the Augmentation of the Maintenance of the Poor Clergy, from and out of the Monies which have arisen or shall from time to time arise from that Bounty, to advance and lend, in respect of each Benefice, Perpetual Curacy or Parochial Chapelry, the clear annual improved Value whereof shall not exceed the Sum of Fifty Pounds, any Sum not exceeding the Sum of One Hundred Pounds, without Interest, but for Repayment of the Principal whereof such Mortgage as is hereinbefore mentioned shall be executed; and

No. 1.
55 Geo. III. c. 147

also to advance or lend, for or in respect of each Benefice, Perpetual Curacy or Parochial Chapelry, the clear annual improved Value whereof shall not exceed the Sum of Fifty Pounds, any Sum not exceeding Two Years yearly Income of such Benefice upon such Mortgage as aforesaid, and to receive Interest for the same at any Rate not exceeding Four Pounds *per Centum per Annum.*

Colleges may lend with or without Interest.

IX. And be it further enacted, That it shall and may be lawful for any College or Hall within the Universities of *Oxford* or *Cambridge*, or for any other Corporate Bodies, being Owners of the Patronage of Ecclesiastical Livings or Benefices, to advance and lend any Sum or Sums of Money of which they have the Power to dispose, for the Convenience of the Parson, Vicar or other Incumbent for the time being of any Benefice, Perpetual Curacy or Parochial Chapelry, within the Patronage of such College or Hall, upon Mortgage as hereinbefore directed, either upon Interest or without any Interest.

Consent of Patron and Bishop to all Deeds of Exchange Mortgage or Purchase.

X. Provided always, and be it further enacted, That when any Parson, Vicar or other Incumbent as aforesaid, shall be desirous of effecting any Exchange, Purchase or Mortgage under the Provisions of this Act, the Consent of the Patron and Bishop to every Deed of Exchange, Conveyance or Mortgage shall, before the same shall be signed and sealed by the Parson, Vicar or other Incumbent, be signified by the said Patron and Bishop respectively, being made Parties to, and signing and sealing the said Deed in the Presence of Two or more credible Persons, who shall by Indorsement thereon attest such signing and sealing, and in which Attestation it shall be expressed that the same Deed was so signed and sealed by such Patron and Bishop before the Execution thereof by such Parson, Vicar or other Incumbent.

'XI. And Whereas there are within divers Dioceses certain exempt Jurisdictions called Peculiars belonging to the Archbishops and Bishops of other Dioceses, and it is expedient that all the Powers and Authorities given by this Act to the Bishop of the Diocese should as to such Peculiars be given to the Archbishop or Bishop to whom the same respectively belong;' Be it therefore further enacted, That all and every the Powers and Authorities given by this Act to the Bishop of any Diocese shall, with respect to the several Peculiars locally situated within such Diocese, be vested in and exercised by the Archbishop or Bishop to whom such Peculiars shall respectively belong, and not by the Bishop within whose Diocese such Peculiars shall be locally situated, but that within all and every Peculiar and Peculiars belonging to any other Person or Corporation than Archbishops and Bishops, such Powers and Authorities shall be vested in and exercised by the Bishop of the Diocese within which such Peculiars shall be locally situated.

Powers executed by Archbishops & Bishops having Peculiars.

Power to Owners to convey on Exchange or Sale.

XII. And be it further enacted, That, from and after the passing of this Act, it shall and may be lawful to and for any Owner or Owners of any Messuages, Buildings, Lands or Hereditaments, whether such Owner or Owners shall be a Corporation Sole or Aggregate, or Tenant or Tenants in Fee Simple, or in Fee Tail General or Special, or for Life or Lives, and for the Guardians, Trustees or Feoffees for Charitable or other Uses, Husbands or Committees of or acting for any such Owner or Owners as aforesaid, who at the time of making any Exchange or Purchase authorized by this Act shall be respectively Infants, Femes Covert or Lunatics, or under any other legal Disability, or otherwise disabled to act for themselves, himself or herself, by Deed or Deeds indented, and to be registered as hereinafter is mentioned; and with such Consent, and to be signified as hereinbefore is mentioned, of such Incumbent, and of the Patron and Bishop, to grant and convey to any Parson, Vicar or other Incumbent

for the time being of [any Ecclesiastical Benefice, Perpetual Curacy or Parochial Chapelry, any Mussuage, Outbuildings, Yards, Gardens and Lands, with their Appurtenances, or any Messuage or Outbuildings only, or any Lands (with or without necessary Outbuildings) only of such Owner or Owners, in lieu of and in Exchange for any Parsonage House, Outbuildings, Yards, Gardens and Glebe Lands, and Pastures, Feedings and Rights of Common, or any of them, or any Part thereof, of or belonging to any such Benefice, Perpetual Curacy or Parochial Chapelry, or (in cases of Purchase), to sell and convey to such Parson, Vicar or other Incumbent any Lands not exceeding in the whole Twenty Statute Acres, with the necessary Outbuildings thereon, for such Sum or Sums of Money as shall be certified to be the true and just Value of the same at the time of such Sale thereof, by a Valuation to be made as hereinafter is directed; and which said Parsonage House, Outbuildings and Glebe Lands so to be granted and taken in Exchange by any Parson, Vicar or other Incumbent (with such Consent and in such Manner as aforesaid), shall for ever, from and after such Grant or Conveyance thereof, be and become vested in and settled upon the same Person or Persons, and to, for and under the same Uses, Estates, Trusts and Limitations, and subject to the same Powers, Conditions, Charges and Incumbrances as the said Messuage, Outbuildings, Lands and Premises so to be granted and conveyed in Exchange were vested in, settled upon and subject to before such Exchange thereof, or would have been vested in, settled upon and subject to in case such Exchange had not been made; and which said Sum or Sums of Money to be received for the Purchase of any Lands or Hereditaments shall in all cases where the Lands or Hereditaments so to be purchased belong to any Corporation Sole or Aggregate, Infant, Feme Covert, Lunatic, or Person or Persons under any other Disability or Incapacity, with all convenient Speed be paid into the Bank of *England*, in the Name and with the Privity of the Accountant General of the High Court of Chancery, to be placed to his Account *ex parte* the Person or Persons or Corporation, who would have been entitled to the Rents, Issues and Profits of such Lands or Hereditaments, to the Intent that such Money shall be applied or laid out under the Direction, and with the Approbation of the said Court (to be signified by an Order made upon a Petition to be perferred by or on behalf of the Person or Persons who would have been entitled to the Rents, Issues and Profits of such Lands and Hereditaments), in the Purchase of the Land Tax, or towards the Payment of any Debts or Incumbrances affecting the same Lands or Hereditaments, or other Lands or Hereditaments standing settled to the same or the like Uses, or in the Purchase of other Lands or Hereditaments to be conveyed, settled and made subject to and for and upon such and the like Uses, Trusts, Limitations and Dispositions, and in the same manner as the Lands or Hereditaments so purchased as aforesaid stood settled or limited, or such of them as at the time of making such Purchase and Conveyance shall be existing, undetermined and capable of taking Effect; and in the mean time and until such Purchase shall be made, the said Money shall, by Order of the said Court of Chancery upon Application thereto, be invested by the said Accountant General in his Name, in some one of the Public Funds of this Kingdom, and the Dividends and Annual Produce thereof shall from time to time be paid by Order of the said Court to the Person or Persons who would have been entitled to the Rents, Issues and Profits of the said Lands or Hereditaments, in case no Purchase and Conveyance thereof had been made under the Provisions of this Act.

No. 1. 55 Geo. III. c. 147

Premises exchanged settled to same Uses.

Application of Purchase Monies of Premises sold.

No. 1:
55 Geo. III. c. 147

Persons incapacitated not to convey (except in Exchange) more than Five Acres.

XIII. Provided always, and be it further enacted, That nothing herein contained shall extend, or be construed to extend, to enable any Corporation Aggregate or Sole, or Tenant in Fee Tail General or Special, or for Life or Lives, or the Guardians, Trustees or Feoffees for Charitable or other Uses, Husbands or Committees, of or acting for any such Owner or Owners as aforesaid, who at the time of making any Sale authorized by this Act, shall be respectively Infants, Femes Covert or Lunatics, or under any other legal Disability, or otherwise disabled to act for themselves, himself or herself, to sell or convey (except by way of Exchange, as in manner by this Act directed) any Lands or Grounds whatsoever, for any of the Purposes of this Act, exceeding the Quantity of Five Statute Acres.

Where Exchange or Purchase made Notice previously

XIV Provided also, That in all cases where any Exchange or Purchase shall be made under the Authority of this Act, Six Calendar Months previous Notice, describing the Particulars, Extent and Situation of the Premises respectively to be given and taken in Exchange or purchased, shall be given of the Intention to make such Exchange or Purchase, by the insertion of the same Notice for Three successive Weeks in some one and the same Newspaper of and in general Circulation in each County wherein the Premises so to be given and taken in Exchange or purchased, or any Part thereof, are situate; and also by affixing such Notice in Writing on a conspicuous Part of the Door of the Church or Chapel of each Parish or Chapelry wherein such Premises or any Part thereof are situate, on Three *Sundays* successively whereon Divine Service shall be performed, and shortly before the Commencement of such Service on each *Sunday* in such Church or Chapel.

Map and Valuation [illegible] actual Survey of Premises g[illegible] and t[illegible]en in Exchange or pur-

XV. And be it further enacted, That whenever any Exchange or Purchase is intended to be made under the Authority of this Act, a Map or Maps under an actual Survey, on Oath (which Oath any Justice of the Peace is hereby authorized to administer) by some competent Surveyor to be approved of by the Patron, Bishop and Incumbent, shall in cases of Exchange be made and taken of the whole of the said Glebe Lands, or of such Part or Parts thereof as will sufficiently enable the Bishop to judge of the Convenience and Expediency of the proposed Exchange, and also of the Glebe or Parsonage House, Buildings and Premises, any Part of which it is proposed to exchange, as well as of the other Lands, House, Buildings and Premises, proposed to be taken in Exchange; and shall in cases of Purchase be made and taken of the whole of the Lands or Hereditaments so to be purchased; and in cases of Exchange the same Surveyor shall in like manner make a Valuation on Oath (to be administered as aforesaid) of the said Glebe Lands and Glebe or Parsonage House, Buildings and Premises, and also of the Lands, House, Buildings and Premises intended to be taken in Exchange, and in cases of Purchase the same Surveyor shall in like manner make a Valuation on Oath of the Lands or Hereditaments so intended to be purchased; and every such Valuation shall include and distinctly specify the Value of all Timber and other Trees growing thereon, and of the Rights of Common, and of all Mines, Minerals and Quarries (if any), and of all other Rights, Profits and Advantages whatsoever (if any) to the said Premises or either of them, or any Part or Parcel of the same, respectively belonging.

Bishop to issue Commission of [illegible]

XVI. Provided also, and be it further enacted, That in all cases, as well of Exchange as of Purchase under this Act, the Bishop, on receiving such Map or Maps and Valuation shall, if he shall in the first instance so far approve of the said Exchange or Purchase, issue

a Commission of Enquiry under his Hand and Seal, directed to such Persons as he shall think proper, not being fewer than Six in Number, and of whom Three at the least shall be Beneficed Clergymen actually resident in the Neighbourhood of the Benefice, Perpetual Curacy or Parochial Chapelry, whereto it shall be proposed to annex any Buildings or Lands by Exchange or Purchase under the Authority of this Act, and of whom One shall be a Barrister at Law of Three Years standing at the least, to be named by the Senior Judge in the last preceding Commission of *Nisi Prius* for the County in which the said Benefice, Perpetual Curacy or Parochial Chapelry, shall be situate, and the Return to which Commission of Enquiry shall be made and signed by a Majority of the Persons therein named, after an actual Inspection by them of all the Premises, with such Map and Valuation before them, and not otherwise, and Three at least of the Persons making and signing the same shall be either Three such Beneficed Clergymen actually resident as aforesaid, or Two at least of such Beneficed Clergymen resident as aforesaid, together with such Barrister as aforesaid; and in no case whatever shall any Exchange or Purchase be effected under the Authority of this Act, unless such Commission shall have been previously issued and returned, and unless the Return to such Commission, so made and signed as aforesaid, shall certify that, after an actual Inspection and Examination of the Premises, such Exchange or Purchase, in the Judgment of the Persons making the said Return, is fit and proper to be made, and will promote the permanent Advantage or Convenience of the Incumbent of such Benefice, Perpetual Curacy or Parochial Chapelry, and his Successors in the same.

No. 1.
55 Geo. III. c. 147

Consent for Patrons in case of Minority, Lunacy, or Marriage.

XVII. And be it further enacted, That whenever the Patron of any Benefice, Perpetual Curacy or Parochial Chapelry, to which the Provisions of this Act extend, shall happen to be a Minor, Ideot, Lunatic or Feme Covert, it shall and may be lawful for the Guardian, Committee or Husband of every such Patron to transact the several Matters, and execute the requisite Deeds as aforesaid, for such Patron, who shall be bound thereby in such manner as if he or she had been of full Age or sound Mind, or Feme Sole, and had done such Acts and executed such Deeds.

Consent where Livings belong to the Crown, or to Duchy of Lancaster.

XVIII. Provided also, and be it further enacted, That in all cases where the Patronage of any Benefice, Perpetual Curacy or Parochial Chapelry, to which the Provisions of this Act extend, shall be in the Crown, and such Living or Benefice shall be above the Yearly Value of Twenty Pounds in the King's Books, the Consent of the Crown to the several Proceedings hereby authorized respecting such Benefice, Perpetual Curacy or Parochial Chapelry, shall be signified by the Execution of the Deeds or Instruments hereinbefore directed, by the Lord High Treasurer or First Lord Commissioner of the Treasury for the time being; but if such Benefice, Perpetual Curacy or Parochial Chapelry, shall not exceed the Yearly Value of Twenty Pounds in the King's Books, such Consent shall be signified by such Execution by the Lord High Chancellor, Lord Keeper or Lords Commissioners of the Great Seal for the time being; and if such Benefice, Perpetual Curacy or Parochial Chapelry, shall be within the Patronage of the Crown, in Right of the Duchy of *Lancaster*, then such Consent shall be signified by the Execution of such Deeds or Instruments by the Chancellor of the said Duchy for the time being

Deeds and Instruments deposited in Archbishop's or Bishop's Registry.

XIX. And be it further enacted, That one Part of all Deeds and Instruments to be made and executed in pursuance of or for carrying into Execution this Act, together with the Maps and Valuations, and the Commissions of Enquiry and the Returns to the same, hereinbefore directed, shall, within Twelve Calendar Months next after the

No. 1.
55 Geo. III. c. 147

Date or Dates thereof, be deposited in the Office of the Registrar of the Diocese wherein such Benefice, Perpetual Curacy or Parochial Chapelry, shall be locally situate, to be perpetually kept and preserved therein, except as to those Benefices which are under the peculiar Jurisdiction of any Archbishop or Bishop, in which case the several Documents before mentioned shall be deposited in the Office of the Registrar of that peculiar Jurisdiction, to which any such Benefice, Perpetual Curacy or Parochial Chapelry shall be subject, and such Registrars shall respectively so deposit and preserve the same, and shall give and sign a Certificate of such Deposit thereof to be written on a Duplicate, or on any other Part or Parts of the said Deeds, or any or either of them, or on some other separate Parchment, Paper or Instrument; and every such Deed or Instrument shall be produced at all proper and usual Hours at such Registry, to every Person applying to inspect the same, and an Office Copy of each such Deed or Instrument, certified under the Hand of the Registrar (and which Office Copy, so certified, the Registrar shall in all cases grant to every Person who shall apply for the same) shall in all cases be admitted and allowed as legal Evidence thereof in all Courts whatsoever; and every such Registrar shall be entitled to the Sum of Ten Shillings and no more (over and besides the Stamp Duty, if any) for such Commission and the previous Requisites thereof; and the Sum of Five Shillings and no more, for so depositing as aforesaid the Deeds, Settlements, Map, Survey, Valuation, Commission and Instruments, and so as aforesaid certifying such Deposit thereof; and the Sum of One Shilling and no more for each such Search; and the Sum of Six pence and no more (over and besides the said Stamp Duty) for each Folio of Seventy-two Words of each such Office Copy, so certified as aforesaid.

Fees of Registrar.

In what case Forms in Schedule 17 G. 3, c. 53, 21 G. 3, c. 66, used for Act.

XX. And be it further enacted, That such of the Forms contained in the Schedules of the said recited Acts of the Seventeenth and Twenty-first Years of the Reign of His present Majesty, as are applicable to the Provisions of this Act, and with such Variations thereof as shall render them so applicable, shall be used and applied to the Purposes of this Act as fully and effectually as if the same were hereby enacted and made Part of this Act.

Act not to repeal any former Law.

XXI. Provided always, and it is hereby declared, That nothing in this Act contained shall extend or be construed to repeal or abridge any Law now in force, enabling any Person or Corporation Sole or Aggregate, to augment or improve any Ecclesiastical Benefice, Perpetual Curacy or Parochial Chapelry.

No. 2.

56 George III. c. 52.—An Act to amend and render more effectual an Act passed in the last Session of Parliament, for enabling Spiritual Persons to exchange their Parsonage Houses or Glebe Lands, and for other Purposes therein mentioned. [20th *June*, 1816.]

56 Geo. III. c. 52.
55 Geo. III. c. 147

'WHEREAS an Act was passed in the last Session of Parliament, intituled, *An Act for enabling Spiritual Persons to exchange the Parsonage or Glebe Houses or Glebe Lands belonging to their Benefices for others of greater Value or more conveniently situated for their Residence and Occupation, and for annexing such Houses and Lands so taken in Exchange to such Benefices as Par-*

No. 2.

'*sonage or Glebe Houses and Glebe Lands, and for purchasing and* 'annexing *Lands to become Glebe in certain cases; and for other* 'Purposes: And Whereas it is expedient to authorize the Incumbents of Benefices, Perpetual Curacies, and Parochial Chapelries to 'apply the Monies arising from the Sale of any Timber cut from the 'Glebe or other Lands of their respective Benefices, Perpetual Curacies, or Parochial Chapelries, towards the Purposes of the said recited Act:' May it therefore please Your Majesty that it may be enacted; and be it enacted by The King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall and may be lawful for the Incumbent of any Benefice, Perpetual Curacy or Parochial Chapelry, with the Consent of the Patron of such Benefice, Perpetual Curacy or Parochial Chapelry, and of the Bishop of the Diocese wherein the same is locally situate, or of the Archbishop or Bishop to whom the Peculiars wherein such Benefice, Perpetual Curacy or Parochial Chapelry is situate shall belong, (such Consent to be signified in manner as in the said recited Act is mentioned,) to pay and apply the Monies to arise by Sale of any Timber cut and sold from the Glebe Lands of such Benefice, Perpetual Curacy or Parochial Chapelry, or from any other Land, whether Copyhold, holden under any Manor of such Benefice, Perpetual Curacy or Parochial Chapelry, or otherwise, the Timber whereof belongs to such Benefice, Perpetual Curacy or Parochial Chapelry, either for Equality of Exchange, or towards and in Part of Equality of Exchange, or for the Price or Purchase Money, or towards and in Part of the Price or Purchase Money of any House, Outbuildings, Yards, Gardens and Appurtenances, or any Lands, or any or either of them, by the said recited Act authorised to be taken in Exchange or to be purchased, and from and after such Exchange or Purchase to be annexed to and to be and become the Parsonage and Glebe House and Glebe Lands and Premises of such Benefice, Perpetual Curacy or Parochial Chapelry, as in the said recited Act is mentioned.

56 Geo. III. c. 52.

Incumbent with Consent of Patron and Bishop may apply Monies arising from Sale of Timber cut to and Exchange or Purchase of Parsonage House or Glebe Lands.

'II. And Whereas it is by the said recited Act enacted, that the 'Bishop shall in cases of Exchange and Purchase under the said Act 'issue a Commission of Inquiry for the Purposes therein mentioned, 'to be directed to such Persons as are therein described, and of whom 'One shall be a Barrister of Three Years' Standing at the least, to be 'named by the Senior Judge of *Nisi Prius* for the County in which 'the Benefice, Perpetual Curacy or Parochial Chapelry, whereto it 'shall be proposed to annex any Buildings or Land by Exchange or 'Purchase under the said Act shall be situate; but inasmuch as the 'Nomination of such Barrister by a Judge of *Nisi Prius* is not applicable to the County Palatine of *Chester* nor to the Principality of '*Wales*;' Be it therefore enacted, That where any Exchange or Purchase shall be made or be proposed to be made under the Authority of the said Act in any Benefice, Perpetual Curacy or Parochial Chapelry, situate within the said County Palatine of *Chester*, or within the said Principality of *Wales*, such Barrister shall be named by the Chief Justice for the time being of the said County Palatine of *Chester* or by the Chief Justice, or, in case of his Absence, the other Justice of the Great Sessions for those Counties within the said Principality of *Wales*, within which said County Palatine or respective Counties of the said Principality of *Wales* the said Benefice, Perpetual Curacy or Parochial Chapelry, shall be situate.

55 Geo. III. c. 147. Sec. 10.

Barrister directed by recited Act to be named by Justices of Nisi Prius to be named in Chester and Wales by the Chief Justice, &c. there.

No. 3.

56 Geo. III. c. 123.—An Act to continue, until the Fifth Day of *April* One Thousand Eight Hundred and Seventeen, an Act of the Fifty-fourth Year of His present Majesty, for explaining and amending several Acts relating to Spiritual Persons holding of Farms, and for enforcing the Residence of such Persons on their Benefices in *England*.

No. 4.

56 Geo. III. c. 141.—An Act for enabling Ecclesiastical Corporate Bodies, under certain Circumstances, to alienate Lands for enlarging Cemeteries or Church Yards. 2d *July*, 1816.

56 Geo. III. c. 141.

'WHEREAS Cemeteries, Churchyards or Burying Grounds, 'are in various Places found to be too small, and the same 'cannot be conveniently enlarged, without appropriating for Conse-'cration some Part of the Lands belonging to Corporations or Spiritual 'Persons, not authorized by Law to alienate such Land for any Pur-'pose whatsoever;' Be it enacted by The King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act it shall and may be lawful for any Spiritual or Ecclesiastical Body Corporate or Spiritual Person, being a Corporation Sole, possessing any Land adjacent to any Cemetery, Churchyard or Burying Ground, to sell, by Indenture of Bargain and Sale, inrolled in the High Court of Chancery within Six Calendar Months, for the Purpose of Consecration, such Portion thereof as may be deemed necessary for enlarging any such Cemetery, Churchyard or Burying Ground, not exceeding One Acre.

Bodies Corporate may sell Part of Land adjoining Cemeteries for enlarging thereof;

II. Provided always, That in case of any Spiritual Person, being a Corporation Sole, the Consent of the Lord Bishop of the Diocese or Ordinary, and of the Patron of the Living held by such Corporation Sole, shall be testified by their being Parties to the Alienation of the said Land; and that previously thereto the Value of such Land shall be ascertained, and, together with a Description thereof, be committed to Writing by some competent Person, to be named and appointed by the Ordinary; which Person so appointed shall verify the same on Oath, before some One of His Majesty's Justices of the Peace for the County, Town or District in which such Land is situated; which Oath the said Justice is hereby empowered to administer; and in case the Value shall appear to exceed One Hundred Pounds, that other Lands, of at least an equal Value, estimated and verified in manner aforesaid, shall be well and legally conveyed to and for the same Uses as the Lands conveyed by the said Spiritual Persons or Corporations Sole, and as the Consideration thereof; and in case the Value shall appear not to amount to One Hundred Pounds, but shall exceed Twenty Pounds, such Value shall be paid to the Governors of the Bounty of Queen ANNE, for the Augmentation of the Maintenance

With certain Consents.

Value of the Land to be ascertained.

If Value above 100l. other Lands to be conveyed.

Application of the Money if under that Value.

of the Poor Clergy, to be by them used and applied for the Benefit of such Spiritual Person or Corporation Sole, in the same manner as they are now empowered by Law to use and apply other Sums of Money coming into their Hands; and in case the Value shall not amount to Twenty Pounds, the said Value shall be paid in Money to such Spiritual Person or Corporation Sole, to be by him applied at his own Discretion.

No 4. 59 Geo. III. c 141

III. Provided always, That no Alienation made by Virtue of this Act shall be questioned after the Expiration of Twenty Years from the Time of such Alienation, on account of any Want of Compliance with the Forms prescribed by this Act.

Time within which Alienations may be questioned.

IV. And be it further enacted, That all Ground which has been or shall be consecrated as Burial Ground shall, after Twenty Years from the time of such Consecration, be considered as discharged from all adverse Titles, Claims and Demands whatsoever, and as absolutely vested in the Trustee or Trustees, if any, thereof; and if there should not be any such Trustee or Trustees, then in the Vicar or Perpetual Curate, if any, for the time being; and if there should not be any Vicar or Perpetual Curate, then in the Rector for the time being of each Parish in which such Burial Ground is or shall be situate.

Burial Ground discharged of adverse Titles, &c. after twenty Years from Consecration thereof.

PART II.—CLASS II.

TITHES.

No. 1.

9 Edward II. Stat. 1, c. 5.—No Prohibition where Tithe is demanded of a new Mill.

9 Ed II. st. 1, c. 5

2 Inst 691. 1 Roll 805. 2 Roll 84.

Ex Rot. in Turr. Lond.

ITEM si aliquis in fundo suo molendinum erexerit de novo & postea a Rectore loci exigatur decima de eodem exhibetur prohibitio regia sub hac forma *Quia de molendino tali hactenus decime non fuerunt solute prohibemus &c. et sententiam excommunicationis si quam hac occasione promulgaveritis revocetis omnino. Responsio.* In tali casu nunquam exivit prohibitio de principis voluntate qui & decernit talem perpetuo non exire.

'ALSO if any do erect in his 'Ground a Mill of new, "and after the Parson of the same "Place demandeth Tithe for the "same, the King's Prohibition "doth issue in this Form: Quia "de tali molendino hactenus decimæ non fuerunt solutæ, prohibemus, &c. & sententiam excommunicationis, si quam hac "occasione promulgaveritis, revocetis omnino. The Answer." 'In such Case the King's Prohibition was never granted by the 'King's Assent, nor never shall, 'which hath decreed that it shall 'not hereafter lie in such Cases.'

PART II.—CLASS XII.

LAND REVENUE OF THE CROWN.

No. 1.

47 Geo. III. Sess. 2, c. 24.—An Act to explain and amend an Act, passed in the Thirty-ninth and Fortieth Years of His present Majesty, concerning the Disposition of certain Real and Personal Property of His Majesty, His Heirs and Successors, and also of the Real and Personal Property of Her Majesty, and of the Queen Consort for the Time being. [1st *August* 1807.

47 G. III. Ses. 2, c. 24.

39. 40 G. 3, c. 88. § c 12.

'WHEREAS by an Act passed in the Thirty-ninth and Fortieth Years of the Reign of His present Majesty, intituled, *An Act concerning the Disposition of certain Real and Personal Property of His Majesty, His Heirs and Successors, and also of the Real and Personal Property of Her Majesty, and of the Queen Consort for the Time being*, it was among other Things recited, that divers Lands, Tenements, and Hereditaments, had become and might thereafter become vested in His Majesty, His Heirs and Successors, by Escheat or otherwise, in Right of the Crown, which, in the Hands of any of His Majesty's Subjects, would be chargeable with certain Trusts, or applicable to certain Purposes, and His Majesty, His Heirs or Successors, might be desirous that the same should be applied accordingly, notwithstanding any Right which He or they might have to hold the same discharged from such Trusts, or without applying the same to such Purposes; but that, by reason of the Provisions contained in the Acts of the First Year of Her said late Majesty Queen ANNE, and the Thirty-fourth Year of His present Majesty's Reign, Doubts might be raised whether His Majesty, His Heirs or Successors, could direct such Application thereof; and that divers Lands, Tenements, and Hereditaments, as well Freehold as Copyhold, had escheated and might escheat to His Majesty, His Heirs or Successors, for Want of Heirs of the Persons last seised thereof or entitled thereto, or by reason of some Forfeiture or otherwise, although not forfeited for Treason or Felony; and that it was expedient to enable His Majesty to direct the Execution of any such Trusts or Purposes as aforesaid, and to make any Grants of any such Manors, Lands, Tenements, or Hereditaments, as aforesaid, notwithstanding the Provisions contained in the said recited Acts; and it was therefore, in and by the said last recited Act, enacted, That it should be lawful for His Majesty, His Heirs and Successors, by Warrant under His or their Sign Manual, to direct the Execution of any Trusts or Purposes to which any Manors, Messuages, Lands, Tenements, or Hereditaments, which had escheated or should escheat to His Majesty, His Heirs or Successors, should have been liable at the Time the same so escheated respectively, or would have been liable in the Hands of any of His Majesty's Subjects; and to make any Grants of such Manors, Lands, Tenements, and Hereditaments respectively, to any Trustee or Trustees or otherwise, for the Execution of such Trusts, and to make any Grants of any Lands, Tenements, or Hereditaments which had escheated or should escheat as aforesaid to any Person or Persons,

No. 1.
47 G. III. Sess. 2, c. 24.

'either for the Purpose of restoring the same to any of the Family of 'the Person or Persons whose Estates the same had been, or of re- 'warding any Persons or Person making Discovery of any such Es- 'cheat, as to His Majesty, His Heirs or Successors respectively, 'should seem fit: And Whereas Doubts have arisen whether the 'Powers given by the said last recited Act extend to Manors, Mes- 'suages, Lands Tenements, or Hereditaments, which have or may 'come to His Majesty, His Heirs and Successors, in Right of His 'Duchy of *Lancaster*, or by reason that the same had been purchased 'by or for the Use of, or in Trust for any Alien or Aliens, and whe- 'ther the same extend to enable His Majesty to grant any Rents or 'Arrears of Rent accrued or become due in respect of any Manors, 'Messuages, Lands, Tenements, or Hereditaments, before any Grant 'thereof under the said Act: And it is expedient that such Doubts 'should be removed;' be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That in all Cases in which His Majesty, His Heirs or Successors, hath or shall, in right of His Crown or of His Duchy of *Lancaster*, become entitled to any Freehold or Copyhold Manors, Messuages, Lands, Tenements, or Hereditaments, either by Escheat for want of Heirs, or by reason of any Forfeiture, or by reason that the same had been purchased by or for the Use of or in trust for any Alien or Aliens, it shall be lawful for His Majesty, His Heirs and Successors, by Warrant under His or their Sign Manual, or under the Seal of the Duchy or County Palatine of *Lancaster*, according to the Nature of the Title to such Manors, Messuages, Lands, Tenements, or Hereditaments respectively, to direct the Execution of any Trusts or Purposes to which the same may have been directed to be applied, and to make Grants of such Manors, Messuages, Lands, Tenements, or Hereditaments, or of any Rents or Profits then due and in Arrear to His Majesty in respect thereof respectively, to any Trustee or Trustees, or otherwise, for the Execution of any such Trusts or Purposes, or to any Person or Persons for the Purpose of restoring the same to any of the Family of the Person or Persons whose Estates the same had been, or of carrying into Effect any intended Grant, Conveyance, or Devise of any such Person or Persons in relation thereto, or of rewarding any Person or Persons making Discovery of any such Escheat, or of His Majesty's Right and Title thereto, as to His Majesty, His Heirs or Successors respectively, shall seem fit; any Thing in the said recited Acts, or any other Act heretofore made, to the contrary notwithstanding.

His Majesty, His Heirs and Successors empowered to direct the Execution of any Trusts to which Lands vested in him by Escheat, &c. (in Right of the Crown or the Duchy of Lancaster,) might have been liable, and to restore such Lands or reward Discoverers.

PART III.—CLASS II.

NAVIGATION, SHIP-OWNERS, AND MARINERS.

No. 1.

54 George III. c. 59.—An Act to allow Ships taken and condemned for being used in carrying on the Slave Trade to be registered as *British*-built Ships.

No. 2.

54 George III. c. 171.—An Act to empower the Commissioners of His Majesty's Treasury to restore Seizures; or remit or mitigate Fines, Penalties or Forfeitures, incurred concerning any Laws relating to the Customs or Excise, or Navigation and Trade of *Great Britain*.

END OF VOL. I.

FURTHER ADDENDUM.

PART I.—CLASS II.

STATUTES RELATING TO THE CLERGY.

57 Geo. III. c. 99.—An Act to consolidate and amend the Laws relating to Spiritual Persons holding of Farms; and for enforcing the Residence of Spiritual Persons on their Benefices; and for the Support and Maintenance of Stipendiary Curates in *England*.*

[10th *July*, 1817.]

WHEREAS an Act passed in the Twenty-first Year of the Reign of His Majesty King HENRY the Eighth, intituled *An Act against Pluralities of Benefices, taking of Farms by Spiritual Men, and for Residence:* And whereas another Act passed in the Twenty-eighth Year of the Reign of His said Majesty King HENRY the Eighth, intituled *An Act for compelling Spiritual Persons to keep Residence upon their Benefices:* And whereas another Act was passed in the Thirteenth Year of the Reign of Her Majesty Queen ELIZABETH, intituled *An Act touching Leases of Benefices, and Ecclesiastical Livings with Cure:* And whereas Three several Acts passed in the Fourteenth, Eighteenth, and Forty-third Years respectively of the Reign of Her said Majesty Queen ELIZABETH, for explaining and amending the said recited Act of the Thirteenth Year aforesaid; and which were made perpetual by an Act passed in the Third Year of the Reign of His Majesty King CHARLES the First, intituled *An Act for the Continuance and Repeal of divers Statutes:* And whereas another Act was passed in the Forty-third Year of the Reign of His present Majesty, intituled *An Act to amend the Laws relating to Spiritual Persons holding of Farms, and for enforcing the Residence of Spiritual Persons on their Benefices in* England: And whereas another Act passed in the Forty-third Year of the Reign of His present Majesty, intituled *An Act to rectify a Mistake in an Act made in this present Session of Parliament, intituled 'An Act to amend the Laws 'relating to Spiritual Persons holding of Farms, and for enforcing 'the Residence of Spiritual Persons on their Benefices in* England, *'and to remove a Doubt respecting the Title of the Statute of the 'Twenty-first Year of King* HENRY *the Eighth therein mentioned:'* And whereas an Act was passed in the Twelfth Year of the Reign of Her late Majesty Queen ANNE, intitled *An Act for the better Maintenance of the Curates within the Church of* England, *and for preventing any Ecclesiastical Persons from buying the next Avoidance of any Church Preferment:* And whereas an Act was passed in the Thirty-

57 Geo. III. c. 99.
21 Hen. 8, c. 13.
28 Hen. 8, c. 13.
13 Eliz. c. 20.
14 Eliz. c. 11.
18 Eliz. c. 11.
43 Eliz. c. 9.
3 Car. 1
43 Geo. 3, c. 84.
43 Geo. 3, c. 109.
12 Anne Stat. 2,

* The Collection was completed, and on the eve of Publication, at the Time of this Act being brought in.

57 Geo. III. c. 99

36 G. 3, c. 83.

sixth Year of the Reign of His present Majesty, intituled *An Act for the further Support and Maintenance of Curates within the Church of England, and for making certain Regulations respecting the Appointment of such Curates, and the Admission of Persons to Cures augmented by Queen* ANNE's *Bounty, with respect to the Avoidance of other Benefices:* And whereas another Act passed in the Fifty-third

53 G. 3, c. 149.

Year of the Reign of His present Majesty, intituled *An Act for the further Support and Maintenance of Stipendiary Curates*: And whereas Doubts have arisen upon the Construction of some of the Provisions of the said Acts; and it is therefore necessary that such Provisions of the said Acts should be explained, and other Provisions made, and that the several Laws relating to Spiritual Persons holding of Farms, and to buying and selling, and for enforcing of Residence and the Maintenance of Stipendiary Curates, should be consolidated in one Act: May it therefore please your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act; so much of the said several recited Act passed in the Reign of His Majesty King HENRY the Eighth, and so much of the said Acts of the Reign of Her Majesty Queen ELIZABETH, and of the said recited Act of His Majesty King CHARLES the First, as relates to Spiritual Persons holding of Farms, and to Leases of Benefices and Livings, and to buying and selling, and to Residence of Spiritual Persons on their Benefices; and also so much of the said recited Act of Her Majesty Queen ANNE, and of the said recited Act of the Thirty-sixth Year of the Reign of His present Majesty, as relates to the Maintenance of Curates within the Church of *England*, and making Provision for appointing Stipends for such Curates, and all the said several other recited Acts passed in the Reign of His present Majesty, shall be and the same are respectively hereby repealed.

R l Acts pealed.

Spi tual Persons take to farm for Occupation above Eighty Acres, without Consent of the Bishop under Penalty of 40s per Acre.

II. And be it further enacted, That from and after the passing of this Act it shall not be lawful for any Spiritual Person having or holding any Dignity, Prebend, Canonry, Benefice, or any Stipendiary Curacy or Lectureship, to take to farm, for Occupation by himself, by Lease, Grant, Words, or otherwise, for Term of Life or Term of Years, or at Will, any Lands, exceeding in Amount in the whole Eighty Acres, for the Purpose of occupying or using or cultivating the same, without the Consent in Writing of the Bishop of the Diocese in which such Dignity, Canonry, Prebend, Benefice, Stipendiary Curacy, or Lectureship shall be locally situate, specially given for that Purpose; and every such Permission to any Spiritual Person to take to farm, for the Purpose of occupying the same, any greater Quantity of Land than Eighty Acres, shall specify the Number of Years, not exceeding Seven, for which the Permission is given; and every such Spiritual Person as aforesaid who shall, without such Permission as aforesaid, take to farm any greater Quantity of Land than Eighty Acres shall forfeit for every Acre of Land above the Quantity of Eighty Acres so taken to Farm, the Sum of Forty Shillings for each and every Year during or in which he shall so occupy, use, cultivate, or farm such Land contrary to the Provisions of this Act, to be recovered by and to the Use of any Person who may inform and sue for the same.

No Spiritual P son beneficed, performing Ec clastical Duty engage in Trade buy to sell an for Profit or Gain.

III. And be it further enacted, That no Spiritual Person having or holding any Dignity, Prebend, Canonry, Benefice, Stipendiary Curacy, or Lectureship, shall by himself, or by any other for him or to his Use, engage in or carry on any Trade or Dealing for Gain or Profit, or deal in any Goods, Wares, or Merchandize, by buying and selling for Lucre, Gain, or Profit, in any Market, Fair, or other Place, upon

Pain of forfeiting the Value of the Goods, Wares, and Merchandizes, by him, or by any to his Use, bargained and bought to sell again contrary to the Provisions of this Act; and that every Bargain and Contract so made by him, or by any to his Use, in any such Trade or Dealing, contrary to this Act, shall be utterly void and of none Effect; and the One Half of every such Forfeiture shall go to His Majesty, and the other Half to him that will sue for the same. 57 Geo. III. c. 99.

Not to extend to Spiritual Persons engaged in keeping Schools, or as Tutors, &c. in respect of any Thing done, or any buying or selling in such Employment; or to selling any Thing bona fide bought for the Use of the Family; or occupying any Glebe, &c.

IV. And be it further enacted, That nothing in this Act contained in relation to being engaged in Trade or Dealing, or buying or selling, shall extend or be construed to extend to, or to subject to any Penalty or Forfeiture, any Spiritual Person for keeping a School or Seminary, or acting as a Schoolmaster or Tutor or Instructor, or being in any Manner concerned or engaged in giving Instruction or Education for Profit or Reward, or for buying or selling, or doing any other Act, Matter, or Thing in the Conduct of, or carrying on, or in relation to the Management of any such School, Seminary, or Employment; or to any Spiritual Person whatever, for the buying of any Goods, Wares, or Merchandizes, or Articles or Things of any Description, which shall, without Fraud or Covin, be bought, to the Intent and Purpose, at the buying thereof, to be used and employed by the Spiritual Person buying the same for his Family or in his Household, and after the buying of any such Goods, Wares, or Merchandizes, or Articles or Things, the selling the same again, or any Parts thereof, which such Person may not want or choose keep, although the same shall be sold at any advanced Price beyond that which may have been given for the same; or for any buying or selling again for any Lucre, Gain, or Profit of any Manner of Cattle or Corn, or other Matters or Things whatever, necessary, proper, or convenient to be bought, sold, kept, or maintained by any Spiritual Person, or any other Person for him, or to his Use, for the Occupation, Manuring, Improving, Pasturage, or Profit of any Glebe, Demesne, Farms, Lands, Tenements, or Hereditaments, which may be lawfully held and occupied, possessed, or enjoyed by such Spiritual Person, or any other for him or to his Use. Provided always, that nothing herein contained shall extend or be construed to extend to authorize any such Spiritual Person to sell any Cattle or Corn, or other Matters or Things as aforesaid, in Person, in any Market, Fair, or Place of public Sale.

Penalty for Non-Residence.

V. And be it further enacted, That from and after the passing of this Act every Spiritual Person holding any Benefice, who shall, without any such Licence or Exemption as is in this Act allowed for that Purpose, wilfully absent himself therefrom for any Period exceeding the Space of Three Months together, or to be accounted at several Times in any one Year, and make his Residence and Abiding at any other Place or Places except at some other Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, of which he may be possessed, shall, when such Absence shall exceed such Period as aforesaid, and not exceed Six Months, forfeit and pay One-third of the Annual Value (deducting therefrom all Outgoings, except any Stipend paid to any Curate) of the Benefice, Donative, Perpetual Curacy, or Parochial Chapelry from which he shall so absent himself as aforesaid; and when such Absence shall exceed Six Months and not exceed Eight Months, One-half of such Annual Value; and when such Absence shall exceed Eight Months, Two-thirds of such Annual Value; and when such Absence shall have been for the whole of the Year, Three-fourths of such Annual Value, to be recovered by Action of Debt, Bill, Plaint, or Information in any of His Majesty's Courts of Record at *Westminster*, or the Courts of Great Sessions in *Wales*, wherein no Essoign, Privilege, Protection, or Wager of Law, or more than One Imparlance, shall be allowed; and the whole of every such Penalty or For-

57 Geo. III. c. 99 feiture shall go and be paid to the Person or Persons who shall inform and sue for the same, together with such Costs of Suit as shall be allowed, according to the Practice of the Court in which such Action shall be brought.

Where no House belonging to the Benefice, &c. Residence within the Limits of Parish, &c. deemed legal Residence.

VI. And be it further enacted, That every Spiritual Person having any Benefice, and who shall not have any House of Residence thereon, and who shall have resided Nine Months in the Year within the Limits of his Benefice, or within the Limits of the City, Town, Place or Parish in which his Benefice may be situated, provided such last-mentioned Residence be within the Distance of Two Miles from the Church or Chapel of his Benefice, shall not be liable to any Penalties on account of Non-residence, nor be obliged to take out any Licence in respect thereof, but that the same shall be deemed a legal Residence to all the Intents and Purposes of this Act; and in all Returns made by the Bishops, Persons so residing shall be returned as resident.

Houses purchased by Governors of Queen Anne's Bounty to be deemed Residences.

VII. And whereas the Governors of Queen ANNE's Bounty have in some Instances purchased and may hereafter purchase Houses not situate within the Parishes for which they are purchased, but so contiguous as to be sufficiently convenient and suitable for the Residence of the officiating Ministers thereof; be it therefore enacted, That such Houses, having been previously approved by the Bishop by Writing under his Hand and Seal, and duly registered in the Registry of the Diocese, shall be deemed Houses of Residence appertaining to such Benefices to all Intents and Purposes whatsoever.

Rectories having Vicarages endowed.

VIII. And be it further enacted, That in all Cases of Rectories having Vicarages endowed, the Residence of the Vicar in the Rectory House shall be deemed a legal Residence to all Intents and Purposes whatever; provided that the Vicarage House be kept in proper Repair, to the Satisfaction of the Bishop.

Power in the Bishop to allow any fit House belonging to the Preferment, to be a House of Residence.

IX. And be it further enacted, That it shall be lawful for the Bishop, in every Case in which there shall not be a House of Residence belonging to any Benefice within his Diocese, to allow and adjudge any fit House within the Limits of such Benefice, and belonging thereto, or any fit House belonging thereto not within the Limits, but so contiguous as to be sufficiently convenient for the Purpose, to be the House of Residence thereof; and such Allowance and Adjudication in Writing under the Hand and Seal of such Bishop shall thereupon be registered in the Registry of the Diocese from Time to Time; and such House shall thenceforth be deemed the House of Residence for the Time being to all Intents and Purposes whatsoever.

Certain Persons exempted from Penalties for Non residence.

X. And be it further enacted, That no Spiritual Person, being Chancellor, Vice-Chancellor, or Commissary of either of the Universities of *Oxford* or *Cambridge*, or being Warden, Dean, Provost, President, Rector, Principal, Master, or other Head Ruler of any College or Hall within the said Universities, and no Spiritual Person having or holding any Professorship, or any public Readership in either of the said Universities, being actually resident within the Precincts of the University, and reading Lectures therein; and no Scholar under the Age of Thirty Years abiding for Study without Fraud at either of the said Universities; and no Chaplain of the King's or Queen's most Excellent Majesty, or of any of the King's or Queen's Children, Brethren, or Sisters, during so long as he shall actually attend in the Discharge of his Duty as such Chaplain in the Household to which he shall belong; and no Chaplain of any Archbishop or Bishop, or of any Temporal Lord of Parliament, or of any other Person or Persons authorized by Law to appoint any Chaplain or Chaplains, during so long as such Chaplain or Chaplains shall abide and dwell and daily attend in the actual Performance of his Duty as such Chaplain in the

Household to which he shall so belong; and no Spiritual Person actually serving as a Chaplain of the House of Commons, or as Clerk of His Majesty's Closet, or as a Deputy Clerk thereof, or a Clerk of the Closet of the Heir Apparent, or as a Deputy Clerk thereof, or as a Chaplain General of His Majesty's Forces by Sea or Land, or Chaplain of His Majesty's Dock Yards, while such Spiritual Person shall be actually attending and performing the Duties of such Office respectively; or as a Chaplain in the Household of any *British* Ambassador residing abroad, during the Time of his performing the Duties of such his Office; or as Chancellor or Vicar General, or as Commissary, whilst exercising the Duties of their Offices respectively; or as an Archdeacon while upon Visitations, or otherwise engaged in the Exercise of his Functions; and no Spiritual Person being a Minor Canon, or Vicar Choral, or Priest Vicar, or any such other public Officer, in any Cathedral or Collegiate Church, during the Times for which such Spiritual Person shall actually reside within the Precincts of the Cathedral or Collegiate Church to which he shall belong, or within the City or Town in which the said Cathedral or Collegiate Church is situate, or the Suburbs thereof, and shall actually perform the Duties of his Office; or as a Dean or Subdean, or Priest or Reader in any of His Majesty's Royal Chapels at *Saint James's* or *Whitehall*, or as a Reader in His Majesty's Private Chapels at *Windsor* or elsewhere, whilst residing and actually performing the Duty of any such Office respectively; or as a Preacher in any of the Inns of Court, or at the Rolls; or as Bursar, Treasurer, Dean, Vice-President, Subdean, or Public Tutor or Chaplain, or other such Public Officer, in any College or Hall in either of the Universities of *Oxford* or *Cambridge*, during the Period for which he may respectively be required, by reason of any such Office, to reside and perform the Duties of any such Office, and actually shall reside and perform the Duties of the same; or as Public Librarian or Public Registrar or Proctor, or Public Orator, or other such Public Officer, in either of the said Universities, during the Period for which he may respectively be required by reason thereof to reside and perform the Duties of any such Office, and actually shall reside and perform the Duties of the same; or as Fellow of any College in either of the Universities, during the Time for which he may be required to reside by any Charter or Statute, and shall actually reside therein; or as Warden, Provost, or Fellow of *Eton* or *Winchester* College, or the Master of the Charter House, during the Time for which he may be required so to reside, and shall actually reside therein respectively; or within the City or Town or Suburbs of the City or Town within or near to which the said Colleges are respectively situate; or as a Master or Usher in the said Colleges of *Eton* or *Winchester*, or as a Master or Usher of *Westminster* School, or as Principal or Professor of the *East India* College; or who shall be specially exempt from Residence under the Provisions of any Act or Acts of Parliament not repealed by this Act, shall be liable to any of the Pains, Penalties, or Forfeitures in this Act contained, for or on account of any Non-residence, during any such Period as aforesaid, on any Benefice; but every such Spiritual Person shall, with respect to Residence under this Act, be entitled to account such Period as if he had legally resided on some other Benefice; any Thing in this Act contained to the contrary notwithstanding. 57 Geo III. c. 99.

XI. And be it further enacted, That it shall be lawful for any Spiritual Person being Dean, during such Time as he shall reside upon his Deanery, or being Prebendary or Canon, or holding any other Dignity or Dignities in any Cathedral or Collegiate Church or Churches, who shall reside any Period not exceeding Four Months altogether within the Year upon such Dignity or Dignities, to account such Re- Dignitaries residing at Cathedral Churches for certain Periods, exempted.

57 Geo III. c. 99

Provision for Cases in which the Year of Residence at Cathedrals commences at any other Period than the 1st of January

sidence as if he had legally resided on some Benefice: Provided always, that it shall be lawful for any Spiritual Person having or holding any Prebend, Canonry, or Dignity in any Cathedral or Collegiate Church, in which the Year for the Purposes of Residence is accounted to commence at any other Period than the First of *January*, and who may keep the Periods of Residence required for Two successive Years at such Cathedral or Collegiate Church, in whole or in part, between the First of *January* and the Thirty-first of *December* in any one Year, to account such Residence, although exceeding Four Months in the Year, as reckoned from the First of *January* to the Thirty-first of *December*, as if he had legally resided on some Benefice; any Thing in this Act contained to the contrary notwithstanding.

Bishop may license for a longer Period if the Duties of a Cathedral require it.

XII. And be it further enacted, That it shall be lawful for the Bishop of the Diocese in which any Benefice shall be locally situate to license any longer Period of Non-residence upon any such Benefice of any Prebendary, Canon, or other Person holding any Dignity in any Cathedral or Collegiate Church, in any Case in which it shall appear to such Bishop, from his own Knowledge, if such Cathedral or Collegiate Church is locally situate within his own Diocese, or if not, by the Certificate of the Bishop of the Diocese in which the Cathedral or Collegiate Church shall be locally situate, to be required for the Performance of any Duties in any such Cathedral or Collegiate Church; provided that every such Spiritual Person shall during such Period reside on such Prebend, Canonry, or Dignity.

Proviso for Prebendaries, &c. appointed before this Act.

XIII. Provided always, and be it further enacted, That no Spiritual Person appointed to any Prebend, Canonry, or Dignity in any Cathedral or Collegiate Church before the passing of this Act, shall be subject to any Penalty or Forfeiture for Non-residence upon any Benefice during the Period of his actually residing upon such Prebend, Canonry, or Dignity.

Persons having House of Residence on their Benefice to forfeit the Exemption, if House not kept in Repair.

XIV. And be it further enacted, That every Spiritual Person having any House of Residence upon his Benefice, who shall not reside thereon, shall, during such Period or Periods of Non-residence, whether the same shall be for the Whole or Part of any Year, keep such House of Residence in good and sufficient Repair; and that every such Spiritual Person who shall not keep such House of Residence in Repair, and who shall not, upon Monition issued by the Bishop of the Diocese in which the same shall be locally situate, put the same in Repair, according to the Requisition of such Monition, within the Time specified therein, to the Satisfaction of the Bishop of the Diocese, and to be certified to the Bishop upon such Survey any Report as shall be required by the Bishop in that Behalf, shall be liable to all Penalties for Non-residence, notwithstanding any Exemption or Licence, during the Period of such House of Residence remaining out of Repair, and until the same shall have been put in good and sufficient Repair, to the Satisfaction of the Bishop of the Diocese.

Bishop may grant Licenses for Non-residence in certain Cases enumerated.

XV. And be it further enacted, That from and after the passing of this Act it shall be lawful for any Bishop, upon Application made for that Purpose, by Petition in Writing, by any Spiritual Person, or by any fit and proper Person on behalf of any Spiritual Person having or holding any Benefice locally situated within his Diocese, upon such Proofs as to any Facts stated in any such Petition as any such Bishop map think necessary, and shall require by Affidavit made before any Ecclesiastical Judge or his Surrogate, or any Justice of the Peace or Magistrate, or any Master Extraordinary in Chancery (which Oath any such Ecclesiastical Judge or Surrogate or Justice of Peace or Magistrate, or Master Extraordinary in Chancery, is hereby authorized and required to administer), to grant in such Cases as are in this Act enumerated, in which, upon due Consideration of all the Circum-

stances stated in any such Application, and verified to the Satisfaction of the Bishop as aforesaid, such Bishop shall in his Discretion think it fit to grant the same, a Licence in Writing under his Hand, expressing the Cause of granting the same to such Spiritual Person to reside out of the Parish, or out of the proper House of Residence of his Benefice, for the Purpose of exempting such Person from any pecuniary Penalty or Forfeiture in respect of any Non-residence thereon; (that is to say), to any Spiritual Person who shall be prevented from residing in the proper House of Residence, or in the Parish, by any actual Illness or Infirmity of Body of himself, or of his Wife or Child, making Part of and residing with him as Part of his Family; and also to any Spiritual Person having or holding any Benefice whereupon or wherein there shall be no House of Residence, or where the House of Residence shall be unfit for the Residence of such Spiritual Person, such Unfitness not being occasioned by any Negligence, Default, or other Misconduct of such Spiritual Person, and such Spiritual Person keeping such House of Residence in Repair to the Satisfaction of the Bishop; and also to any Spiritual Person having or holding any Benefice, and occupying in the Parish of the same respectively any Mansion or Messuage, to reside in such Mansion or Messuage, such Spiritual Person keeping the House of Residence, and other Buildings belonging thereto, in good and sufficient Repair and Condition, and producing to the Bishop Proof to his Satisfaction, at the Time of granting and renewing any such Licence, of such good and sufficient State of Repair; and also to any Spiritual Person having or holding any Benfice of small Value, and serving as a licensed Stipendiary Curate elsewhere, and providing for the serving of such his Benefice, to the Satisfaction of such Bishop; and also to any Master or Usher of any endowed School duly licensed by the Bishop, and actually employed in teaching therein; and also to any Master or Preacher of any Hospital or incorporated Charitable Foundation during the Period for which he may be required to reside by any Charter or Statute of any such Hospital or incorporated Charitable Foundation, or by any other lawful Authority in the same, and shall actually reside and perform his Duties therein; or to any Person holding any endowed Lectureship, or endowed Chapelry, or endowed Preachership, and performing and executing the Duties thereof respectively, with the Licence of the Bishop in whose Diocese he shall so officiate; or to any Spiritual Person having or holding any Benefice of small Value, and serving as Preacher in any Proprietary Chapel, in any City or Town, with the Licence of the Bishop in whose Diocese he shall so officiate; or to any Spiritual Person actually serving as Chaplain in any of His Majesty's Garrisons, or as Chaplain to the Royal Military Asylum at *Chelsea*, or Royal Military College at *Sandhurst*, or as Teacher of the Royal Military Academy at *Woolwich*, or as Chaplain at either of the Royal Hospitals at *Greenwich* or *Chelsea*, or as Chaplain to either of the Royal Hospitals for Seamen at *Haslar* or *Plymouth*, or as Chaplain to the Naval Asylum, or in His Majesty's Navy, or as Chaplain of His Majesty's Gaol of *Newgate*, or of the Penitentiary at *Milbank*, or as Chaplain of any *British* Factory, or as principal Surrogate or Official in any Ecclesiastical Court of any Diocese, or as a Librarian of the *British* Museum, or of *Sion* College, or as one of the Trustees of Lord *Crewe's* Charity, during the Time of personal Attendance on the Duties of such Office respectively: Provided always, that the Spiritual Person obtaining any such Licence shall pay to the Secretary or Officer of the Bishop the Sum of Ten Shillings, exclusive of and over and above the Stamp Duty chargeable thereon, and no more: Provided also, that if any Spiritual Person applying to any Bishop for any such Licence shall think himself aggrieved by the Refusal thereof, it shall

57 Geo. III c. 99

Fee for Licence.

Persons aggrieved may appeal to the Archbishop.

57 Geo III. c. 99. be lawful for such Spiritual Person to appeal to the Archbishop of the Province, who shall forthwith, either by himself, or some Commissioner or Commissioners appointed from among the other Bishops of his Province, under his Hand, make or cause to be made Inquiry into the same, and by Writing signed by himself confirm such Refusal, or grant a Licence under this Act, as shall seem just and proper: Provided always, that in every such Case the Spiritual Person so appealing shall give Security to the Bishop for the Payment of such reasonable Expences occasioned by the Appeal as the Archbishop or his Commissioner or Commissioners shall award.

Security to be given for Payment of Expences.

In Cases not enumerated Bishops may grant Licences and assign Salaries to Curates employed.

XVI. And be it further enacted, That it shall be lawful for any such Bishop as aforesaid, in any Cases not herein-before enumerated, in which under all the Circumstances of any such Case such Bishop shall think it expedient to grant to any Spiritual Person possessed of any Benefice a Licence to reside out of the Parish, or out of the proper House of Residence, as the Case may be, or as the Case may appear to such Bishop to require, and to assign, in any Case in wich a Stipendiary Curate may be employed to do the Duty of such Spiritual Person, such Salary as he shall judge fit to appoint, due Respect being had to the Value of such Benefice, and to all other Circumstances of the Case: And it shall also be lawful for any Bishop, in case of the Absence from the Realm of any Spiritual Person, to grant any such Licence without any Application made for that Purpose, and from Time to Time in any such Case to renew any such Licence as he shall think fit, and in every such Case to appoint a Stipendiary Curate in case no Curate duly licensed shall be then employed in serving such Benefice, and to assign a Salary to such Curate; or if any Curate shall have been and be then so employed, to assign any additional Salary to such Curate; and in every and any of such Cases to cause such Salaries to be paid by Sequestration of the Profits of the Benefice: Provided always, that in every such Case respectively, the Nature and Special Circumstances thereof, and the Reasons that have induced such Bishop to grant such Licence as aforesaid, shall be forthwith transmitted to the Archbishop of the Province to which such Bishop shall belong, who shall forthwith by himself, or by some Commissioner or Commissioners appointed for that Purpose from among the Bishops of such Province, by Writing under his Hand, which Commissioner or Commissioners is and are thereupon authorized to take upon himself or themselves the Execution of the said Commission, examine into such Case, and make such Inquiries as to any Particulars relating thereto, as such Archbishop or Commissoner or Commissioners so appointed as aforesaid may think necessary; and after such Inquiries made by himself, or where the same shall be made by such Commissioner or Commissioners, after a Return of the Substance thereof in Writing to such Archbishop, such Archbishop shall thereupon allow or disallow such Licence in the whole or in part, or make any Alteration therein as to the Period for which the same may have been granted or otherwise, and likewise as to the Stipend assigned to the Curate, as to such Archbishop shall seem fit; and no such Licence shall be good, valid, or effectual under this Act, for any Purpose whatever, unless it shall have been so allowed and approved by such Archbishop, such Allowance thereof being signified by the signing thereof by such Archbishop: Provided always, that it shall not be necessary in such Licence to specify the Cause of granting the same.'

Reasons for granting them to be transmitted to the Archbishop for Examination and Allowance.

Licences not to be void by the Death or Removal of the Grantor, unless revoked by the Successor.

XVII. And be it further enacted, That no Licence granted under this Act shall be made void by the Death or Removal of the Bishop granting the same, but the same shall be and remain good and valid notwithstanding any such Death or Removal, unless the same shall be revoked by the next or any succeeding Bishop, as the Case may require.

57 Geo. III. c. 99.

Every Application for Licence shall be in Writing, and shall state certain Particulars.

XVIII. And be it further enacted, That every Application made by or in behalf of any Spiritual Person holding any Benefice, Donative, Perpetual Curacy, or Parochial Chapelry, to the Bishop of the Diocese, for any Licence for Non-residence, shall be in Writing, and shall be signed by the Person making the same, and shall state whether such Spiritual Person intends to perform the Duty himself, and if he does, where and at what Distance he intends to reside; or if he intends to employ a Curate, the Application shall state what Salary he proposes to give to his Curate, and whether the Curate proposes to reside or not to reside in the Parish; and if the Curate intends to reside, then whether in the Parsonage House; and if he does not intend to reside in the Parish, then the Application shall state at what Distance therefrom, and at what Place such Curate intends to reside; and whether such Curate serves any other Parish as Curate or Incumbent, or has any Ecclesiastical Preferment, or holds any Donative, Perpetual Curacy, or Parochial Chapelry, or officiates in any other Church or Chapel; and such Application shall also state the gross annual Value of the Benefice in respect of which any Licence for Non-residence shall be applied for; and it shall not be lawful for the Bishop to grant any such Licence, unless the Application shall contain a Statement of the several Particulars aforesaid; and all such Applications and Specifications shall be kept and filed by the Registrar of the Diocese in a separate Book, which shall be kept and preserved for that Purpose; and such Book shall not be open to public Inspection, or disclosed, or Copies thereof made, except with the Leave in Writing of the Bishop of the Diocese.

By whom Licences may be granted while a See is vacant, or the Bishop absent, &c.

XIX. And be it further enacted, That during the Vacancy of any See, the Power of granting Licences under this Act, subject to the Regulations therein contained, shall be exercised by the Vicar General of the Diocese; or in case such Circumstances shall arise as shall disable the Bishop from exercising in Person the Functions of his Office, it shall be exercised by such Person or Persons as is or are lawfully empowered to exercise his general Jurisdiction in the Diocese.

Licences may be revoked.

XX. And be it further enacted, That it shall be lawful for any Bishop who shall have granted any Licence for Non-residence as aforesaid, or for any Successor or Successors of any such Bishop, to revoke any such Licence in any Case in which it may appear to him or them proper and expedient to revoke the same: Provided, that any Spiritual Person may appeal against any such Revocation by the Bishop, in like Manner as is herein-before directed in case of any Refusal of any Licence: Provided also, that it shall be lawful for any Archbishop to whom such Appeal shall be made, to order and direct such reasonable Fees and Charges to be paid by any Spiritual Person appealing as aforesaid, in respect of any such Proceedings as aforesaid, as he shall in his Discretion think fit: Provided also, that no Licence for Non-residence granted under this Act shall continue in force for more than Three Years from the granting thereof, or after the Thirty-first day of *December* in the Second Year after the Year in which such Licence is granted.

Fees may be ordered to be paid by Appellants.

Limiting the Time of Licences.

Copies of Licences or Revocations to be filed in the Registry of the Diocese, and a List kept for Inspection, and Copies transmitted to Churchwardens;

XXI. And be it further enacted, That every Bishop who shall grant or revoke any Licence for Non-residence under this Act shall and he is hereby required, within One Month after the Grant or Revocation of such Licence, to cause a Copy of every such Licence or Revocation to be filed in the Registry of his Diocese; and an Alphabetical List of such Licences and Revocations shall be made out by the Registrar of such Diocese, and entered in a Book, and kept for the Inspection of all Persons, upon Payment of the Sum of Three Shillings and no more; and a Copy of every such Licence with respect

57 Geo. III. c. 99.

to any Benefice shall be transmitted by the Spiritual Person to whom the Licence is granted, to the Churchwardens of the Parish, Township, or Place to which the same relates, within One Month after the Grant of such Licence; and every Bishop revoking any Licence shall cause such Revocation to be transmitted to the Churchwardens of the Parish, Township, or Place to which it relates, which Copies shall [illegible] Parish Chest; and every Registrar who

[illegible]

sue for the same, in like Manner [illegible]
under the Provisions of this Act; and a Copy of every [illegible] or Revocation shall likewise be produced by the Churchwarden, and publicly read by the Registrar or other Officer at the Visitation of the Ecclesiastical District within which the Benefice in respect whereof the Licence shall have been granted, or Revocation made, shall be locally situate, immediately next succeeding the granting or Revocation thereof.

and publicly read at the first Visitation.

A List of Licences allowed by the Archbishop, or granted in his own Diocese, shall be annually transmitted to His Majesty in Council, who may revoke Licences, &c.

XXII. And be it further enacted, That every Archbishop who shall in his own Diocese grant any Licence, or who shall allow or approve, in Manner directed by this Act, any Licence or Licences in any Case or Cases not enumerated in this Act, shall annually on [illegible] Day of *January* in each [illegible]

[illegible]

and shall in every such List specify the [illegible] have induced him to grant, allow, or approve the said Licences, together with the Reasons transmitted to him by the Bishops for granting any such Licences in their respective Dioceses; and it shall be lawful for his Majesty in Council, by an Order made for that Purpose, to revoke and annul any such Licence; and if His Majesty in Council shall think fit so to do, such Order shall be transmitted to the Archbishop who shall have granted or allowed or approved such Licence, who shall thereupon cause a Copy of every such Order, made in relation to any Licence so allowed or approved, to be transmitted to the Bishop of the Diocese in which such Licence shall have been granted; and such Bishop shall cause a Copy of the mandatory part of the Order to be filed in the Registry of such Diocese, and a like Copy to be delivered to the Churchwardens of the Parish to which the same relates, in Manner herein-before directed as to Revocation of Licences under this Act; and every such Archbishop shall cause a Copy of the mandatory Part of every such Order, made in relation to any such Licence as aforesaid granted by him in his own Diocese, to be in like Manner filed in the Registry of his Diocese, and a like Copy also to be delivered to the Churchwarden of the Parish to which such Licence shall relate, in Manner before mentioned: Provided always, that after such Licence shall have been so revoked by his Majesty in Council, the same shall nevertheless, in all Questions that shall have arisen or may thereafter arise touching the Non-residence of the Spiritual Person to whom the same shall have been granted, between the Period at which the same was granted or allowed or approved, and the Time at which the same shall be so revoked as aforesaid, be deemed and taken to be and to have been valid and effectual to all the Intents and Purposes of this Act.

Licence, although revoked, shall be deemed valid between the Grant and Revocation.

On or before 25th March annually a Return shall be made to His Majesty in Council of

XXIII. And be it further enacted, That on or before the Twenty-fifth Day of *March* in every Year a Return or Returns shall be made to His Majesty in Council, by every Bishop, of the Names of every Benefice within his Diocese, or subject to his Jurisdiction by

57 Geo III. c. 99.

every Benefice, with Names of Residents and Non-residents, &c.

virtue of this Act, and the Names of the several Spiritual Persons holding the same respectively who shall have resided, and also the Names of the several Spiritual Persons respectively who shall not have resided thereon by reason of any Exemption under or by virtue of this Act, or by reason of any Licence granted by such Bishop for any and what Cause enumerated by this Act, and also of all Spiritual Persons not having any such Exemption or Licence, who shall not have resided on their respective Benefices, so far as the Bishop is informed thereof; and also the Names of all Curates licenced to serve any Benefice on which the Incumbent is not resident, and whether the gross annual Value of such Benefice amounts to or exceeds Three Hundred Pounds *per Annum* or not, the Amount of the Curate's Salary, and the Place of his Residence; and every Spiritual Person who shall be non-resident in any Year subsequent to the passing of this Act, by reason of Residence on any other Benefice, or of any Exemption under this Act, and to entitle him to which it is not necessary to obtain any Licence under this Act, shall, within Six Weeks from and after the First Day of *January* in every following Year, notify the same in Writing under his Hand to the Bishop of the Diocese to whose Jurisdiction he is subject by this Act, or otherwise, in respect of such Benefice, specifying the Nature of such Exemption, and whether the gross annual Value of the Benefice on which he is non-resident amounts to or exceeds Three Hundred Pounds *per Annum* or not; and every Spiritual Person who shall have more than One Benefice, and who shall reside on one of them, or who shall reside during any Period of the Year on any Dignity, or in the Performance of the Duties of any Office in any Cathedral or Collegiate Church, or who shall be non-resident for any Period of the Year on account of any of the Causes of temporary Exemption specified in this Act, shall in like Manner, and within the like Period in each Year, notify the same.

Non-residents by Exemption without Licence shall yearly notify to the Bishop of the Diocese within a certain Period.

XXIV. And be it further enacted, That every Spiritual Person who shall neglect to make such Notification as by this Act is directed within such Period of Six Weeks as aforesaid, shall forfeit and pay for every such Offence the Sum of Twenty Pounds, to be levied, by Order of the Bishop of the Diocese, by Sequestration, if not otherwise paid, after Monition to pay the same, out of the Profits of the Benefice in respect of which he shall neglect to make such Notification, by the Bishop of the Diocese to whom the Notification ought to be made, to be applied, as such Bishop may direct, to useful and charitable Purposes: Provided always, that it shall be lawful for such Bishop to remit or order the Repayment of any Part of any such Penalty, in like Manner as is allowed by this Act in Cases of Non-compliance with an Order for Residence.

Persons neglecting to notify Cause of Exemption, to forfeit 20l recoverable by Sequestration;

with Power of Mitigation or remitting by the Bishop

XXV. And be it further enacted, That nothing in this Act contained shall extend or be construed to extend to exempt any Spiritual Person or Persons from any Canonical or Ecclesiastical Censures, or affect any Proceedings that shall hereafter be instituted in any Ecclesiastical Court in order to cause the same to be inflicted, in relation to the Non-residence of any Spiritual Person having or holding any Benefice, who shall not have obtained a Licence according to the Provisions of this Act to be Absent therefrom, nor have any other lawful Cause of Absence: Provided always, that no Proceeding be admitted in any Ecclesiastical Court against any Spiritual Person for Non-residence not exceeding Three Months in any One Year, at the Suit or Instance of any Person or Persons other than the Bishop only of the Diocese within which the Benefice in respect whereof such Non-residence shall have taken place shall be locally situated; any Thing in any Law or Laws, or Ecclesiastical Canon or Canons, to the contrary thereof notwithstanding.

Act not to exempt from Censure for Non-residence without Licence; but no Censure for Non-residence shall be in force, nor any Proceedings be admitted, except at the Suit of the Bishop.

57 Geo III. c. 99.

If any unlicenced Person does not sufficiently reside, the Bishop may issue a Monition.

XXVI. And be it further enacted, That in every Case in which it shall appear to any such Bishop as aforesaid that any Spiritual Person, having or holding any Benefice, and not being licenced according to this Act to be absent therefrom, nor having any lawful Cause of Absence from the same, does not sufficiently reside on the same respectively, it shall be lawful for such Bishop to issue or cause to be issued a Monition to such Spiritual Person forthwith to proceed to and reside thereon, and perform the Duties thereof; and to make a Return to such Monition within a certain Number of Days after the issuing thereof, so as that in every such Case there shall be Thirty Days between the Time of delivering such Monition to such Spiritual Person, or leaving the same at his then usual or last Place of Abode, or if not there to be found, with the officiating Minister or one of the Churchwardens, and also a Copy thereof at the House of Residence (if any such there be) belonging to such Benefice, to which any such Spiritual Person shall be required by such Monition to proceed and reside thereon, and the Time specified in such Monition for the Return thereto; and a Copy of every such Monition shall immediately on the issuing thereof be filed in the Registry of such Bishop's Court, and shall be open for Inspection on the Payment of Three Shillings and no more; and the Spiritual Person to whom any such Monition shall be sent under this Act shall, within the Time specified for that Purpose, make a Return thereto into such Registry, to be there filed; and it shall be lawful for the Bishop to whom any such Return shall be made, to require such Return or any Fact contained therein to be verified by the Oath of such Spiritual Person or others, to be taken before some Surrogate or Justice of the Peace, or Master Extraordinary in Chancery, which Oath any such Surrogate or Justice of the Peace, or Master Extraordinary in Chancery, is hereby authorized and required to administer, on Application being made for that Purpose; and in every Case where no such Return shall be made, or where such Return shall not state such Reasons as shall be deemed satisfactory by such Bishop for the Non-residence of the Spiritual Person to whom such Monition shall have been sent as aforesaid, or where the same or any of the Facts contained therein shall not be so verified as aforesaid when the same shall have been required, then and in such Case it shall be lawful for such Bishop to issue an Order in Writing under his Hand and Seal, to require such Person to proceed to and reside as aforesaid, within Thirty Days after such Order in Writing, or a Copy thereof shall have been delivered or left in like Manner as is herein-before required as to Monitions; and in case of Non-compliance, it shall be lawful for such Bishop to sequester the Profits of such Benefice of such Spiritual Person as aforesaid, until such Order shall be complied with, or such sufficient Reasons for Non-residence stated and proved as aforesaid; and to direct, by any Order to be made for that Purpose under his Hand, and filed as aforesaid, the Application of such Profits, after deducting the necessary Expences of serving the Cure, either in the whole or in such Proportion as he shall think fit, in the first Place, to the Payment of such reasonable Expences as shall have been incurred in relation to such Monition and Sequestration, and in the next Place towards the Augmentation or Improvement of any such Benefice, or the House of Residence thereof, or any of the Buildings and Appurtenances thereof, or towards the Improvement of any of the Glebe or Demesne Lands thereof, or to order and direct the same or any Proportion thereof to be paid to the Governors of the Bounty of Queen Anne, for the Augmentation of the Maintenance of the poor Clergy, to be applied for the Purposes of such Augmentation as such Bishop shall in his Discretion under all Circumstances think fit and expedient; and it

Returns to be [made] to Monitions which may [be re]quired to [be verified.]

Where Return shall not be made, or shall not be satisfactory, Bishop may order Residence, and if disobeyed, may sequester the Profits of the Benefice, and direct an Application of the Profit.

shall also be lawful for any such Bishop, within Six Months after such Order for Sequestration, or within Six Months after any Money shall have been actually levied by such Sequestration, to remit to any such Spiritual Person any Part or Proportion of such sequestered Profits, or cause the same or any Part thereof that shall have been paid or directed to be paid to the Governors of Queen ANNE's Bounty to be repaid to such Spiritual Person, which Repayment the said Governors are hereby authorized and required, upon an Order under the Hand of any such Bishop, to make out of any Money then in their Hands, or if no Money shall then be in their Hands, out of the next Money that shall come to their Hands, in any Case in which, by reason of the subsequent Obedience of any such Spiritual Person to any such Monition or Order, or the stating and proving such sufficient Reasons as aforesaid, such Bishop shall think the same proper: Provided always, that when any such Spiritual Person shall think himself aggrieved by reason of any such Sequestration issued by any Bishop, it shall be lawful for any such Spiritual Person, within One Month after the making any Order for any such Sequestration as aforesaid, to appeal to the Archbishop of the Province to which such Bishop shall belong, who shall forthwith, either by himself or some Commissioner or Commissioners appointed from among the Bishops of his Province for that Purpose under his Hand and Seal, make or cause to be made due Inquiry into the same, and make such Order therein or relating thereto, or to the Profits that shall be so sequestered as aforesaid, for the Return to such Spiritual Person of the same or any Part thereof, or otherwise, as shall under all the Circumstances of the Case appear to such Archbishop (after such Inquiry made by himself or by his Commissioner or Commissioners, and in the latter Case, after the Substance of such Inquiry shall have been returned in Writing to the said Archbishop) to be just and proper: Provided always, that the Party so appealing shall give Security to the Bishop for the Payment of such reasonable Expences occasioned by the Appeal, as the Archbishop or his Commissioner or Commissioners shall award: Provided also, that no such Order for any Sequestration shall be put in force during such Appeal as aforesaid, and until the same shall be determined.

57 Geo. III. c. 99.

Appeal against Sequestration may be made to the Archbishop.

Appellant to give Security for Payment of the Expences.

XXVII. And be it further enacted, That every Spiritual Person to whom any such Monition or Order in Writing shall be sent as aforesaid under this Act, who shall be at the Time of the issuing thereof absent from Residence in or upon his Benefice contrary to the Provisions of this Act, but who shall in obedience to such Monition or Order forthwith return to due Residence, and the Profits of whose Benefice shall by reason of such Return not be sequestered, shall nevertheless pay all Costs, Charges, and Expences incurred by reason of the issuing and serving such Monition or Order, to be levied as any Costs may be levied upon any Spiritual Person by any Bishop under any of the Provisions of this Act.

Persons who shall return to Residence on Monition shall pay the Costs.

XXVIII. And, to the Intent effectually to enforce *bonâ fide* Residence according to the Intent and Meaning of such Monition and Order as aforesaid, be it further enacted, That if any Spiritual Person not licenced under this Act to be absent from his Benefice, nor having other lawful Cause of Absence from the same, who, after any such Monition or Order as aforesaid requiring his Residence, and before or after any such Sequestration as aforesaid, shall in obedience to any such Monition or Order have begun to reside upon his Benefice, shall afterwards, and before the Expiration of Six Months next after the Commencement of such Residence, without the Leave of such Bishop, wilfully in the Judgment of such Bishop absent himself from such Benefice, it shall be lawful for such Bishop, without issuing any

If any Person returning to Residence on Monition shall, before Six Months thereafter absent himself the Bishop may, without Monition, sequester the Profits of the Benefice.

57 Geo III. c. 99.

other Monition or making any other Order, again to sequester and apply the Profits of such Benefice, as before directed by this Act, for the Purpose of enforcing the Residence of such Spiritual Person, according to the true Intent of the original Monition issued by such Bishop as aforesaid; and it shall be lawful for the Bishop so to proceed in like Cases from Time to Time as often as Occasion may require; provided that in each and every such Cases such Spiritual Person shall be entitled to appeal against such Sequestration, in such Manner and upon such Terms as herein-before is and are mentioned touching Appeals respecting Sequestration, but nevertheless the same shall be in force during such Appeal.

Bishops empowered to punish past Non-residence.

XXIX. And whereas it is expedient that Bishops should be empowered summarily to punish past Non-residence, as well as to compel Residence in future; be it therefore enacted, That in all Cases in which any Spiritual Person shall have become subject to any Penalty or Forfeiture for any Non-residence, it shall be lawful for the Bishop within whose Diocese such Penalty or Forfeiture shall have arisen, to proceed against such Spiritual Person for such past Non-residence, and to levy the Penalties incurred thereby by Monition and Sequestraion, and to direct the Appication thereof in like Manner and subject to the same Regulations, and with like Powers of remitting or ordering the Repayment of any Part of such Penalties, as is directed or allowed in Cases of Non-compliance with any Order for Residence.

Penalties, for the Recovery of which Monition has been issued, may be remitted by the Bishop; and special Returns made of the Reasons for such Remission.

XXX. And be it further enacted, That in every Case in which any Archbishop or Bishop shall think proper, under all the Circumstances, after proceeding by Monition for the Recovery of any Penalty under this Act of more than One-third of the Value of any Benefice, for any Non-residence exceeding Six Months in the Year, to remit the Whole or any Part of any such Penalty, such Archbishop shall forthwith transmit to his Majesty in Council, and such Bishop shall transmit to the Archbishop of the Province to which he belongs, a List of such Cases as have occurred in his or their respective Dioceses, specifying the Nature and special Circumstances of each Case, and the Reasons for the said Remission, in the same Manner as is directed in relation to the Licences for Non-residence granted in non-enumerated Cases; and it shall thereupon be lawful for His Majesty in Council, or for the said Archbishop, as the Case may be, to allow or disallow such Remission in whole or in part, in the same Manner as is provided in this Act with relation to the Allowance or the Disallowance of Licences for Non-residence: Provided always, that the Decision of the said Archbishop, with respect to Cases transmitted to him from any such Bishop, shall be final.

If any Spiritual Person shall continue under Sequestration Two Years, or incur Three Sequestrations within that Period, the Benefice shall become void.

XXXI. And be it further enacted, That if the Benefice of any Spiritual Person shall continue for the Space of Two Years under any Sequestration made under the Provisions of this Act for Disobedience to the Bishop's Monition requiring such Spiritual Person to reside on his Benefice, or shall under the Provisions of this Act incur Three such Sequestrations in the said Space of Two Years, the Spiritual Person not being relieved with respect to any of such Sequestrations upon Appeal, the Benefice, in relation to Non-residence upon which such Sequestration shall have been made shall become *ipso facto* void; and the Bishop of the Diocese shall thereupon give Notice thereof to the Patron or Person entitled to present, who shall thereupon present or nominate some Clerk thereto other than the Spiritual Person whose Benefice shall have so continued under such Sequestration, or who shall have incurred such Sequestrations as aforesaid, as if the same had been avoided by the natural Death or Resignation of such Spiritual Person.

57 Geo. III. c. 99.

Contracts for letting Houses in which any Spiritual Persons shall by Order of the Bishop be required to reside, shall be void.

XXXII. And be it further enacted, That all Contracts or Agreements made for the letting of the House of Residence, or the Buildings, Gardens, Orchards, and Appurtenances necessary for the convenient Occupation of the same, belonging to any Benefice, to which House of Residence any Spiritual Person shall be required by Order of the Bishop as aforesaid to proceed and to reside therein, or which shall be assigned or appointed as a Residence to any Curate by the Bishop, shall, upon a Copy of such Order, Assignment, or Appointment being served upon the Occupier thereof, or left at the House, be null and void; and a Copy of every such Order, Assignment, or Appointment shall immediately on the issuing thereof be transmitted to One of the Churchwardens of the Parish, or such other Person as the Bishop shall think fit, and be by him forthwith served on the Occupier of such House of Residence, or left at the same: And any Person continuing to hold any such House of Residence, or any such Building, Garden, Orchard, or Appurtenances, after the Day on which the said Spiritual Person shall be directed by such Order to reside in such House of Residence, or which shall be specified in any such Assignment or Appointment, and after Service of such Copy as aforesaid, or the same being so left as aforesaid, shall forfeit the Sum of Forty Shillings for every Day he shall, without the Permission of the Bishop in Writing for that Purpose obtained, wilfully continue to hold any such House, Building, Garden, Orchard, or Appurtenances, together with the Expence of serving such Order, in case it shall have been deemed necessary specially to serve such Order, to be allowed by the Bishop issuing the Order or making such Assignment or Appointment as aforesaid, and to be recovered and applied in like Manner as the Penalties for Non-residence are directed to be recovered and applied by the Provisions of this Act; and it shall also be lawful for the Spiritual Person so directed to reside as aforesaid, or Curate to whom any such Residence is assigned, to apply to any Justice of the Peace or Magistrate of the County, Riding, Province, City, or Place, for a Warrant for the taking Possession thereof; and the Justice of the Peace to whom any such Order for such Possession is produced shall and he is hereby required thereupon to give a Warrant for such Possession, and Possession may thereupon be taken of such House under such Warrant at any Time in the Day-time, by entering the same by Force, if necessary, without any other Proceeding by Ejectment or otherwise; any Thing in any Act or Acts of Parliament or Law or Laws to the contrary notwithstanding.

Any Person holding Possession after the Day appointed shall be subject to Penalty.

Not liable to Penalty while the Tenant shall continue to occupy.

XXXIII. Provided always, and be it further enacted, That no Spiritual Person shall be liable to any Penalties for not residing in any such House of Residence, during such Time as such Tenant shall continue to occupy such House of Residence or other Buildings necessary to the Occupation of the same.

No Oath relating to Residence shall be required of any Vicar.

XXXIV. And be it further enacted, That from and after the passing of this Act, no Oath shall be required of or taken by any Vicar in relation to Residence on his Vicarage; any Law, Custom, Constitution or Usage to the contrary thereof notwithstanding.

Penalties not recoverable for more than One Year.

XXXV. And be it further enacted, That no Penalty or Forfeiture shall be recovered by any Proceeding or Action against any Spiritual Person under the Provisions of this Act, other or further than those which such Spiritual Person may have incurred during the Year ending on the Thirty-first Day of *December* immediately preceding the Commencement of such Proceeding or Action.

Penalties not levied under Monition may be recovered by Action.

XXXVI. And be it further enacted, That every Penalty for Non-residence under this Act, in respect of which no Proceeding shall have been had by Monition before the First Day of *April* next after the Year in which the same shall have been incurred, may be recovered by Action or Suit in the Manner by this Act directed.

57 Geo. III. c. 99.

Actions for Penalties not to be commenced before 1st May after Expiration of the Year.

XXXVII. And be it further enacted, That no Action of Debt, Bill, Plaint, or Information against any Spiritual Person, for the Recovery of any Penalties and Forfeitures under this Act, shall be commenced or filed in any of His Majesty's Courts of Record at *Westminster*, or the Court of Great Sessions in *Wales*, until the First Day of *May* after the Expiration of the Year in which the alleged Offence shall have taken place.

Commencement and Conclusion of the Year.

XXXVIII. And be it further enacted, That for all the Purposes of this Act the Year shall be deemed to commence on the First Day of *January*, and be reckoned therefrom to the Thirty-first Day of *December*, both inclusive.

Calendar Months to be taken for the Purposes of this Act.

XXXIX. And be it further enacted, That for all the Purposes of this Act the Months therein named shall be taken to be Calendar Months, except in any Case in which any Month or Months are to be made up of different Periods less than a Month, and in every such Case Thirty Days shall be deemed a Month.

No Action to be commenced for any Penalty, until after One Calendar Month's Notice given to the Defendant and Bishop of Diocese.

XL. And whereas, notwithstanding the Regulations contained in this Act, Spiritual Persons may through Inadvertence, and in many Cases from unavoidable Circumstances and Causes, become subject to Penalties and Forfeitures and vexatious Prosecutions, unless Provision is made for the Prevention thereof; be it therefore enacted, That from and after the passing of this Act, no Writ shall be sued out against, nor any Copy of any Process at the Suit of any Informer be served upon any Spiritual Person, for any Penalty or Forfeiture incurred under any of the Provisions of this Act, until a Notice in Writing of such intended Writ or Process shall have been delivered to him, or left at the usual or last Place of his Abode, and also to the Bishop of the Diocese, by leaving the same at the Registry of his Diocese, by the Attorney or Agent for the Party who intends to sue or cause the same to be sued out, or served One Calendar Month at the least before the suing out or serving the same; in which Notice shall be clearly and explicitly contained the Cause of Action which such Party hath or claimeth to have, and the Penalty or Penalties for which such Person intends to sue, and on the Back of which Notices respectively shall be endorsed the Name of such Attorney or Agent, together with the Place of his Abode; and no such Notice shall be given before the First Day of *April* in the Year next after any such Penalty or Penalties shall have been incurred.

Plaintiff not to recover without Proof made that such Notices were given.

XLI. And be it further enacted, That no Plaintiff shall recover any Verdict against any Spiritual Person for any Penalty or Forfeiture under the Provisions of this Act, unless it is proved upon the Trial of such Action that such Notices were respectively given as aforesaid; but in Default thereof such Spiritual Person shall recover a Verdict with Double Costs.

No Evidence to be given but such as is contained in the Notices.

XLII. And be it further enacted, That no Evidence shall be permitted to be given by the Plaintiff, on the Trial of any such Action as aforesaid, of any Cause of Action, except such as is contained in the Notices hereby directed to be given.

Spiritual Person may by Leave pay into Court, before Issue joined, such sum as he shall think fit.

XLIII. And be it further enacted, That it shall be lawful for any Spiritual Person against whom any Action shall be brought for any Penalty or Forfeiture under the Provisions of this Act, by Leave of the Court in which such Actions shall depend, at any Time before Issue joined, to pay into Court such Sum of Money as he shall see fit; whereupon such Proceedings, Orders, and Judgments shall be had, made, and given in and by such Court, as in other Actions where the Defendant is allowed to pay Money into Court.

The Court in which any Action shall be depending, may require the Diocesan

XLIV. And be it further enacted, That the Court in which any Action, Bill, Plaint, or Information shall be depending for the Recovery of any Penalty or Forfeiture for Non-residence under this Act,

may and shall, upon Application made for that Purpose, require, by Rule or Order of the said Court or any Judge thereof, the Bishop of the Diocese within the Limits of which the Benefice shall be locally situate, or to whom the same shall be subject according to the Provisions of this Act, for or by reason of Non-residence in, at, or upon which the Penalties and Forfeitures shall be sought to be recovered by such Action, Bill, or Information, to certify in Writing under his Hand to the said Court, and also to the Party for that Purpose named in the said Rule or Order, the reputed Annual Value of such Benefice; and upon such Rule or Order being left with such Bishop, or the Registrar of such Bishop, such Bishop shall accordingly certify such reputed Annual Value; and such Certificate shall, in all subsequent Proceedings upon such Action, Bill, Plaint, or Information, be received and taken as Evidence of the Annual Value of such Benefice, for the Purposes of this Act; without Prejudice nevertheless to the Admissibility or Effect of any such other Evidence as may be offered or given respecting the actual Value thereof. 57 Geo III. c 99. to certify the reputed Annual Value of Benefice, &c.

XLV. And be it further enacted, That it shall be lawful for any Spiritual Person to whom any Licence for Non-residence shall have been granted, and against whom any Action shall be brought for any Penalty or Forfeiture by reason of any Non-residence, or any Matter or Thing relating whereto any such Licence under this Act has been granted, to plead such Licence in bar of any such Action; and if the Plaintiff in any such Suit or Action shall discontinue any such Suit or Action after any Plea of Licence shall have been pleaded thereto under this Act, then and in such Case the Defendant in such Suit or Action shall have full Costs of Suit; and if in any such Suit or Action a Verdict shall be given for the Defendant, or the Plaintiff shall become nonsuit, the Defendant shall have Double Costs, and have the like Remedy for the same as any Defendant hath in other Cases to recover Costs by Law; and it shall be lawful for the Court, or any Judge of the Court in which any Suit or Action shall be commenced, upon any Application made in that Behalf, to order and direct, if such Court or Judge shall deem it expedient so to do, that the Plaintiff in any such Suit or Action shall give Security for the Payment of such Costs, and that all Proceedings in any such Suit or Action shall be staid until such Security shall be given as to the Court or Judge to whom any such Application shall be made shall seem fit. Licence may be pleaded in bar of Action; and in case of Nonsuit, &c. the Defendant shall have Double Costs.

XLVI. Provided always, and be it further enacted, That if at the Time of filing any Monition requiring any Spiritual Person to reside on his Benefice, or to recover the Penalties incurred by past Non-residence, no Notice of any Action for any such Penalty or Forfeiture shall have been already given in Manner aforesaid, then and in such Case no such Action, Suit, Bill, Plaint, or Information shall be afterwards brought for any Penalty or Forfeiture incurred by reason of any Non-residence of such Spiritual Person before the issuing of such Monition, or during any Proceedings that may be had under such Monition; and if any such Action or Suit shall be so commenced the Defendant therein may plead in bar thereof, that such a Monition as aforesaid has issued in respect of the same Benefice; and such Defendant, unless upon Application to the Court the same shall be dispensed with, shall, upon pleading such Matter, file or cause to be filed an Affidavit in the said Court, thereby stating the Period specified in such Monition, and that, according to the Belief of the Defendant, the Bishop who has issued or caused such Monition to be issued is proceeding upon the said Monition, to the Intent to make the same effectual to the Intents and Purposes of this Act, otherwise such Plea shall not be good or available in the Law. If at the Time of filing any Monition no Action shall have been commenced, none shall be afterwards brought, &c.

57 Geo. III. c. 99.

No Penalty to be levied against the Person where it can be recovered by Sequestration within Three Years.

XLVII. And be it further enacted, That no Penalty or Costs incurred by any Spiritual Person by reason of any Non-residence on his Benefice, shall be levied by Execution against the Body of any such Person, whilst he shall hold the same or any other Benefice out of the Profits of which the same can be levied by Sequestration within the Term of Three Years; and in case the Body of any such Spiritual Person shall be taken in Execution for the same, the Court in which the same was recovered, or any Judge thereof, may and shall upon Application made for that Purpose, discharge the Party from such Execution, in case it shall be made to appear to the Satisfaction of such Court or Judge that such Penalty and Costs can be levied as aforesaid.

Non-resident Incumbents neglecting to appoint Curates, Bishop to appoint.

XLVIII. And be it further enacted, That if any Spiritual Person holding any Benefice, who does not or shall not actually reside thereon Nine Months in each Year (unless such Person shall do the Duty of the same, having a legal Exemption from Residence, or a Licence to reside out of the same, or to reside out of the Parsonage House or Vicarage House, or other usual House of Residence belonging to the same), shall for a Period exceeding Three Months absent himself from his Benefice, without leaving a Curate duly licensed or other Spiritual Person to perform, and who shall duly perform the Ecclesiastical Duties of such Benefice, or shall for the Period of Three Months after the Death, Resignation, or Removal of any Curate who has served his Church or Chapel, neglect to notify such Death, Resignation, or Removal to the Bishop of the Diocese, or to nominate to the Bishop of the Diocese a proper Curate, then and in every such Case, and in every Case in which no Curate shall be nominated to the Bishop for the Purpose of being licensed by him within such Period as aforesaid, the Bishop is hereby authorized to appoint and licence a proper Curate, with such Salary as by this Act is allowed and directed, to serve the Church or Chapel of the Parish or Place in respect of which such Neglect or Default shall have occurred: Provided always, that the Licence shall in every Case specify whether the Curate is required to reside within the Parish or Place or not; and if the Curate is permitted by the Bishop granting the Licence to reside out of the Parish or Place, the Grounds upon which the Curate is so permitted to reside out of the Parish or Place shall be specified in the said Licence, and the Distance of the Residence of any Curate from any Church or Chapel which he shall be licensed to serve shall not exceed Five Statute Miles, except in Cases of Necessity, to be approved by the Bishop, and specified in the Licences

Curate to reside on all Benefices above 300l. a Year, &c. except under special Circumstances.

XLIX. And be it further enacted, That in every Case where a Curate is appointed to serve a Benefice upon which the Incumbent is non-resident for more than Three Months in the Year from Exemption, Licence, or otherwise, such Curate shall be required by the Bishop to reside within the Parish; provided the gross Value of such Benefice amounts to Three Hundred Pounds a Year or upwards, and the Population amounts to Three Hundred Persons or upwards, or provided the Population amounts to One Thousand Persons or upwards, whatever may be the Value of such Benefice: Provided always, that whenever it shall be made out to the Satisfaction of such Bishop, that from special and peculiar Circumstances great Inconvenience would arise from such Curate being compelled to reside within the Parish, it shall be lawful for the Bishop to allow such Curate to reside in some near and convenient Place: Provided also, that the Licence to be granted to such Curate shall specify the special Circumstances which have induced the Bishop to allow such Residence out of the Parish, and shall be entered and filed in the Registry of the Diocese.

57 Geo. III. c. 99.

It Duty be inadequately performed the Bishop may appoint Curate

L. And be it further enacted, That whenever it shall appear to the Satisfaction of any Bishop, either of his own Knowledge, or upon Proof by Affidavit laid before him, that by reason of the Number of Churches or Chapels belonging to any Benefice locally situate within his Diocese, or the Distance of such Churches or Chapels from each other, or the Distance of the Residence of the Spiritual Person serving the same from such Churches or Chapels, or any or either of them, or the Negligence of the Spiritual Person holding the same, that the Ecclesiastical Duties of such Benefice are inadequately performed, such Bishop may by Writing under his Hand require the Spiritual Person holding such Benefice to nominate to him a fit Person or Persons, with sufficient Stipend or Stipends, to be licensed by him to perform or to assist in performing such Duties, specifying therein the Grounds of such Proceeding; and if such Spiritual Person shall neglect or omit to make such Nomination for the Space of Three Months after such Requisition so made as aforesaid, then and in every such Case it shall be lawful for such Bishop to appoint a Curate or Curates, as the Case shall appear to such Bishop to require, with such Stipend or Stipends as such Bishop shall think fit to appoint, not exceeding in any Case in the whole the Stipends allowed to Curates by this Act, nor, except in the Case of Negligence, exceeding One-half of the gross annual Value of the Benefice, although the Spiritual Person to whom such Churches or Chapels shall belong shall actually reside or serve the same: Provided always, that such Requisition, and any Affidavit made to found the same, shall be forthwith filed by the Bishop in the Registry of his Court. Provided also, that it shall be lawful for any such Spiritual Person, who shall think himself aggrieved by any such Appointment of such Curate or Curates, to appeal to the Archbishop of the Province to which such Bishop shall belong, in such and the like Manner, and under such Provisions and Directions, as are allowed to any Spiritual Person thinking himself aggrieved by any Sequestration issued by any Bishop.

Bishops may enforce Performance of Church Service both Morning and Evening.

LI. And be it further enacted, That in all Cases where the Bishop of the Diocese shall deem it proper to enforce the Performance of Morning and Evening Service on *Sundays*, or any other Service required by Law in any Parish Church or Parochial Chapel, or the Chapel of any Extra-parochial Place, it shall be lawful for such Bishop to enforce the same by Monition and Sequestration, to be issued in the Manner by this Act provided.

Statement of Particulars necessary to be given by Persons applying for a Licence for a Curate.

LII. And be it further enacted, That every Bishop to whom any Application shall be made for any Licence for a Curate to serve for any Person not duly residing upon his Benefice, shall, before he shall grant such Licence, require a Statement of all the Particulars by this Act required to be stated by any Person applying for a Licence for Non-residence; and it shall not be lawful for any Bishop to grant a Licence to any Curate to serve the Church or Chapel of any Person as aforesaid, upon any such Application as aforesaid, until a Statement of all such Particulars as aforesaid shall have been delivered to him; and such Statement shall be kept and filed and preserved from public Inspection, and disclosed only in like Manner and in such Cases as is before directed as to Statements of Persons applying for Licences for Non-residence.

Bishops shall appoint Salaries Curates.

LIII. And be it further enacted, That it shall be lawful for the Bishop, and he is hereby required, subject to the several Provisions and Restrictions in this Act contained, to appoint to every Curate such Salary as is allowed and specified in this Act; and every Licence to be granted to a Stipendiary Curate under this Act shall contain and specify the Amount of the Salary allowed by the Bishop to the Curate; and such Licence, or any Copy of the Registry thereof, signed by the

53 Geo. III. c. 99.

Registrar of the Diocese or his Deputy, shall be Evidence of the Amount of the Salary so appointed to any Curate in all Courts of Law or Equity; and in case any Difference shall arise between any Rector or Vicar or Person holding any Benefice, and his Curate, touching such Stipend or Allowance, or the Payment thereof, or of the Arrears thereof, the Bishop on Complaint to him made, may and shall summarily hear and determine the same; and in case of wilful Neglect or Refusal to pay such Stipend, Salary, or Allowance, or the Arrears thereof, he shall be and is hereby empowered to proceed by Monition and Sequestration to sequester the Profits of the Benefice for and until Payment of such Stipend or Allowance or the Arrears thereof: Provided always, that the Curate obtaining any such Licence shall pay to the Secretary or Officer of the Bishop the Sum of One Pound, exclusive of any Stamp Duty which may be chargeable thereon; which said Sum of One Pound shall be in Remuneration of all and every Fee or Fees now demandable by the said Secretary or Officer for obtaining such Licence, or for the Signature of any Declaration by the said Curate in consequence of such Licence, or of any Certificate of such Curate having signed such Declaration; and provided also, that from and after the passing of this Act, as often as any Person shall be licensed to Two or more Curacies within the same Diocese at one and the same Time, it shall be sufficient for such Person to sign One Declaration only, appointed to be signed by an Act intituled *An Act of Uniformity*; and also that it shall be sufficient for such Person to produce One Certificate only of his having so signed such Declaration before the Bishop of the Diocese.

Stipends to Curates of Incumbents before July 20, 1813, not to exceed certain Rates, except Cases of Neglect.

LIV. And be it further enacted, That it shall be lawful for the Bishop to appoint for the Curate any Stipend or Allowance not exceeding Seventy-five Pounds *per Annum*, and also the Use of the House of Residence, with the Gardens and Stables belonging thereto, or a further Sum of Fifteen Pounds in lieu of the Use of the Rectory or Vicarage House, or other Houses of Residence, in case there shall be no House, or it shall not appear to the Bishop convenient to allot or assign the House to the Curate, in respect of any Benefice to which the Spiritual Person holding the same was instituted or appointed before the Twentieth Day of *July* One Thousand Eight Hundred and Thirteen; but it shall not be lawful for the Bishop to assign any greater Stipend or Allowance than aforesaid, in respect of any such Benefice, during the Incumbency of any such Spiritual Persons as aforesaid, unless with the Consent of the Spiritual Person holding the Benefice, or in case of Neglect to appoint or to nominate to the Bishop a proper Curate.

The Salaries payable to Curates, to be in proportion to the Value and Population of the

LV. And be it further enacted, That in every Case in which any Spiritual Person shall have been, after the Twentieth Day of *July* One Thousand Eight Hundred and Thirteen, or shall hereafter be instituted or inducted, or nominated or appointed, to, or otherwise become Incumbent or possessed of any Benefice, and shall not duly reside thereon, unless such Person shall do the Duty of the same, having a legal Exemption from Residence, or a Licence to reside out of the same, or to reside out of the Parsonage or Vicarage, or other usual House of Residence belonging to the same, the Bishop shall appoint for the Curate licensed to serve such Benefice of such non-resident Incumbent or Person as aforesaid, in his Absence, such Salary as is herein-after next mentioned; (that is to say), such Salary shall in no Case be less than Eighty Pounds *per Annum*, or than the Annual Value of the Benefice, if the gross Value thereof shall not amount to Eighty Pounds *per Annum*; and such Salary shall not be less than One Hundred Pounds *per Annum*, or than the whole Value as aforesaid, if the said Value shall not amount to One Hundred

Pounds *per Annum* in any Parish or Place where the Population, according to the Returns then last made in pursuance of any Act or Acts of Parliament, shall amount to or exceed Three Hundred Persons; and such Salary shall not be less than One Hundred and Twenty Pounds *per Annum*, or the whole Value as aforesaid, if the said Value shall not amount to One Hundred and Twenty Pounds *per Annum*, in any Parish or Place where the Population shall appear as aforesaid to amount to or to exceed Five Hundred Persons; and such Salary shall not be less than One Hundred and Fifty Pounds *per Annum*, or than the whole Value as aforesaid, if the said Value shall not amount to One Hundred and Fifty Pounds *per Annum*, in any Parish or Place where the Population shall appear as aforesaid to amount to or to exceed One Thousand Persons. Provided always, that the annual Value of all Benefices of which the Value, estimated as is herein provided, does not amount to One Hundred and Fifty Pounds *per Annum*, shall be estimated from the Returns made by the Bishops of the several Dioceses to the Governors of Queen ANNE'S Bounty; or from any future Returns which may be made by the said Bishops to the said Governors respecting Parishes or Places omitted in the said Returns; or respecting Parishes or Places in the actual Income of which it shall be made appear to the Bishops that any considerable Variation has taken place, either by Augmentation made by the said Governors or otherwise.

LVI. And be it further enacted, That in any Parish or Place where it shall appear to the Satisfaction of the Bishop that the actual annual Income of the Benefice, clear of all Deductions, exceeds the Sum of Four Hundred Pounds *per Annum*, it shall be lawful for the Bishop to assign to the Curate of such Parish or Place, being resident within the same, and serving no other Cure, a Salary or Allowance of One Hundred Pounds *per Annum*, notwithstanding the Population of such Parish or Place may not appear as aforesaid to amount to Three Hundred Persons; and that in any Parish or Place where the actual Annual Income shall appear to exceed Four Hundred Pounds as aforesaid, and where the Population shall also appear as aforesaid to amount to or exceed Five Hundred Persons, it shall be lawful for the Bishop to assign to the Curate of such Parish or Place, being resident within the same, and serving no other Cure, any larger Stipend or Allowance, so that the same shall not exceed by more than Fifty Pounds *per Annum* the Amount of the Stipend or Allowance herein-before respectively required to be assigned to any such Curate.

LVII. And be it further enacted, That in every Case in which it shall be made out to the Satisfaction of the Bishop of any Diocese, that any Spiritual Person holding any Benefice is or has become non-resident or incapable of performing the Duties thereof from Age, Sickness, or other unavoidable Cause, and that from these or from any other special and peculiar Circumstances of the Case great Hardship or Inconvenience would arise if the full Amount of Salary specified in this Act should be allowed to the Curate, then and in such Case it shall be lawful for such Bishop to assign to the Curate any such Salary less than the said full Amount in this Act specified, as shall under all the Circumstances appear to him just and reasonable: Provided always, that in the Licence granted in every such Case it shall be stated, that for special Reasons the Bishop hath not thought proper to assign to the Curate the full Amount of Salary allowed or required to be assigned by this Act: Provided also, that such special Reasons shall be entered fully and at large in a separate Book to be kept for that Purpose, and to be deposited in the Registry of the Diocese, which Book shall not be open to Inspection unless with the Leave of the Bishop or by other proper Authority, as in the Cases of Application for Licences for Non-residence.

Where the Benefice exceeds 400l. Allowance may be made to Curates of 100l. per Annum, &c.

[illegible] Cases.

57 Geo. III c. 99

Salary of Curate engaged to serve interchangeably at different Places belonging to the same Incumbent.

LVIII. And be it further enacted, That if any Incumbent of Two or more Benefices, residing *bonâ fide*, in different Proportions of each and every Year, on some or one other of such Benefices, the full Period specified by this Act, shall employ a Curate to perform Ecclesiastical Duty interchangeably from Time to Time upon such of the Benefices from which he shall be absent during his own actual Residence upon any other thereof, then and in such Case it shall be lawful for the Bishop to assign to any such Curate any Salary not exceeding such Salary as would be allowed under this Act for the largest of such Benefices, nor less than would be allowed for the smallest, as to the Bishop shall under all the Circumstances appear just and reasonable: Provided always, that if any such Incumbent shall employ a Curate or Curates for the whole Year upon each or any of such Benefices, such Incumbent so residing *bonâ fide* as aforesaid, then and in such Case it shall be lawful for the Bishop to assign to either or each of such Curates any such Salary less than the Amount specified in this Act, as he shall think fit.

No Spiritual Persons not to serve more than Two Churches in One Day, except in certain Cases and with special Licence for that Purpose from the Bishop.

LIX. And be it further enacted, That from and after the passing of this Act no Spiritual Person shall serve more than Two Churches in One Day, or Two Chapels, or One Church and One Chapel, in One Day, unless from the local Situation of the Churches or Chapels, or from the Value of the Benefices to which they belong, or other special Causes, it may in the Judgment of the Bishop be expedient or necessary, for the Performance of Ecclesiastical Duties in such Places, to grant Licence to any Spiritual Person to serve Three Churches or Chapels, then and in such Case it shall be lawful for the Bishop to grant such Licence to any Spiritual Person to serve Three Churches or Chapels, not being distant from each other more than Four measured Miles: Provided always, that in every such Case the Reasons for granting such Licence shall be stated by the Bishop in the Licence granted for serving the Third of such Churches or Chapels held by such Spiritual Persons, and such Licence shall not be valid or effectual unless the Reasons for granting the same are inserted therein as aforesaid: Provided always, that the Residence of such Curate or Spiritual Person shall be so placed as that it shall not be necessary for him to travel more than Sixteen measured Miles in One Day for the Performance of the Duties of such Churches or Chapels.

How the Salaries shall be adjusted where the Curate is permitted to serve in an adjoining Parish.

LX. And be it further enacted, That in every such Case where any Bishop shall find it necessary or expedient, for the obtaining any proper Performance of Ecclesiastical Duties, to license any Person holding any Benefice to serve as Curate of any adjoining or other Parish or Place, it shall be lawful for such Bishop to appoint, for such Spiritual Person so licensed, a Salary less by a Sum not exceeding Thirty Pounds *per Annum* than the Salary which in the several Cases in this Act specified the Bishop is required to assign and appoint; and in every Case where the Bishop shall find it necessary or expedient as aforesaid to license one and the same Person to serve as Curate for more than one Parish or Place, it shall be lawful for such Bishop to direct, that during such Time as such Curate shall serve such Churches or Chapels, the Salary to be received by him for serving each of the said Churches or Chapels shall be less by a Sum not exceeding Thirty Pounds *per Annum* than the Salary which in the several Cases herein-before mentioned the Bishop is required by this Act to assign and appoint.

Agreements for Salaries to Curates contrary to this Act, void.

LXI. And be it further enacted, That all Agreements and Contracts made or to be made between Persons holding Benefices and their Curates, in Fraud or Derogation of the Provisions of this Act, and all Agreements and Contracts whereby any Curate shall undertake or in any Manner bind himself to accept or be content with any

Stipend or Salary less than that which shall be stated to be allowed in any Licence of such Curate, shall be void to all Intents and Purposes in the Law whatsoever, and shall not be set up, pleaded, or given in Evidence in any Court of Law or Equity; and notwithstanding the Payment and Acceptance, in pursuance of any such Contract or Agreement, of any Sum less than the Sum specified in the Licence of such Curate, or any Receipt, Discharge, or Acquittance that may be given in Cases of such Payment and Acceptance, the Curate or his personal Representatives shall be and remain entitled to the full Amount of what shall remain unpaid of the Stipend, Salary, or Allowance specified in his Licence; and the Payment of what shall so remain unpaid shall, together with Treble Costs of recovering the same, be enforced by Monition, on Proof of what shall so remain unpaid to the Satisfaction of the Bishop, and by Sequestration of Profits of the Benefice, to be issued by the Bishop for that Purpose: Provided that the Application of the Curate shall in every such Case be made to the Bishop within Twelve Months after he shall have quitted his Curacy, or by the Representative of any Curate within Twelve Months after his Death; and provided also, that no Sequestration shall by virtue of this Act affect the Profits of any Benefice beyond the Time during which the Benefice shall be held by the Person liable to make the Payment in respect of which such Profits shall be sequestered. 57 Geo. III. c. 99.

Curate's Salary, if of the Value of the Benefice shall be liable to certain Charges.

LXII. And be it further enacted, That in every Case in which any Bishop shall appoint for any Curate a Salary equal to the whole annual Value of such Benefice, such Salary shall be subject to Deduction in respect of all such Charges and Outgoings as may legally affect the Value of such Benefice, and to any Loss or Diminution which may lessen such Value, without the wilful Default or Neglect of the Spiritual Person holding the Benefice.

The Bishop to allow the Rector, &c. to deduct from Curate's Salary, for Repairs to a limited Amount, in certain Cases.

LXIII. And be it further enacted, That it shall be lawful for the Bishop, upon the Application of any Rector, Vicar, or Spiritual Person holding any Benefice, the whole Profit or Income of which shall have been allotted to the Curate, to allow such Rector, Vicar, or Spiritual Person to deduct and retain therefrom, in any or each Year, so much Money, not exceeding in any Case One fourth Part of such Profits or Income, or of the Salary assigned to the Curate, as shall have been actually laid out and expended during the Year in the Repair of the Chancel, Parsonage, Vicarage, or other House of Residence, and Premises and Appurtenances thereto belonging, in respect of which such Rector, Vicar, or Person as aforesaid, or his Executors, Administrators, or Assigns, would be liable for Dilapidations to the Successors; and it shall also be lawful for the Bishop, in like Manner, to allow any Rector, Vicar, or Spiritual Person aforesaid, having or holding any Benefice the Profits or Income of which shall not exceed One Hundred and Fifty Pounds *per Annum*, to deduct and retain from the Salary allotted the Curate, in each or any Year, so much Money as shall have been actually laid out and expended in such Repairs as aforesaid over and above the Amount of the Surplus remaining of such Profits or Income after Payment of the Salary allotted to the Curate, so that the Sum so deducted, after laying out such Surplus, shall not in any Year exceed One-fourth Part of the Salary allotted to the Curate.

Curates may be directed to reside in the Parsonage House, in case of Non-residence of Incumbents.

LXIV. And be it further enacted, That it shall be lawful for the Bishop who shall grant any Licence to any Curate to serve any Church or Chapel where the Rector or Vicar or Person holding any Benefice is not resident for Four Months in each Year, to allot, if he shall think fit, for the Residence of such Curate, the Parsonage or Vicarage House, or usual House of Residence of the Person holding

57 Geo III. c. 99.

the Benefice, with the Offices, Stables, Gardens, and Appurtenances thereto belonging, if there shall be any such House of Residence belonging thereto, or any Part or Parts thereof, during the Time of such Curate's serving the Cure, or during the Non-residence of such Rector or Vicar or Spiritual Person; and it shall be lawful for the Bishop assigning any such House or Residence to any Curate, to sequester the Profits of the Benefice to which the House shall belong, in any Case in which Possession shall not be given up to the Curate, and until such Possession shall be given, and to apply or direct the Application of the Profits arising from such Sequestration, or to remit the same or any Part thereof, as the Bishop shall in his Discretion think fit.

Curates to pay Taxes of Parsonage Houses in certain Cases.

LXV. And be it further enacted, That in every Case where the Bishop shall appoint, for the Curate licensed to serve any Benefice, a Salary not less than the whole gross Annual Value of the same, and shall, in addition to such Salary, direct that such Curate shall reside in the Parsonage or Vicarage House, or usual House of Residence of the Spiritual Person holding such Benefice, such Curate shall be liable, during his serving such Cure, to the same Taxes and Parochial Rates and Assessments, in respect of such House and the Appendages thereof of which he may so be in Occupation, as if he had been instituted or inducted or nominated or appointed to the said Benefice.

Bishop may direct the Curate to give up Possession of Parsonage.

LXVI. And be it further enacted, That it shall be lawful for the Bishop at any Time, upon Three Months Notice in Writing, to direct any such Curate to deliver up any such Parsonage or Vicarage House or usual House of Residence, and the Offices, Stables, Gardens, and Appurtenances thereto belonging, and such Curate shall thereupon peaceably deliver up the Possession of the said Premises, pursuant to such Notice; and in case any such Curate shall refuse to deliver up such Premises, he shall forfeit and pay to the Rector or Vicar, or Spiritual Person holding the Benefice, the Sum of Forty Shillings for every Day of such wrongful Possession, to be recovered by such Rector or Vicar or Spiritual Person by Action of Debt in any Court of Record at *Westminster*, as any Penalties may be recovered for Non-residence under this Act.

Rector, &c. shall not dispossess Curate of House without Order of the Bishop, and Three Months Notice to Curate;

LXVII. And be it further enacted, That it shall not be lawful for the Rector or Vicar or other Person holding any Benefice, in any Case in which the Parsonage or Vicarage, or usual House of Residence shall have been assigned to the Curate as a Residence, to dispossess such Curate, or take Possession thereof, until the Permission of the Bishop shall have been given in Writing for that Purpose, and Three Months Notice of such his Intention to the Curate, who shall thereupon quit the same according to such Notice; and every Curate who shall reside in the House of Residence of any Benefice which shall become vacant, shall quit such House of Residence within Three Months after such Institution or Appointment of any Spiritual Person thereto, upon being required so to do by the Spiritual Person instituted or appointed, and having One Month's previous Notice at the least given to him to quit such House of Residence.

Curate to quit in One Month after Institution to a vacant Benefice, &c.

Curate not to quit Curacy assigned him without Three Months Notice to the Incumbent and Bishop, under a certain Penalty.

LXVIII. And be it further enacted, That no Curate shall quit any Benefice to which he shall be licensed, until after Three Months Notice of his Intention to quit given to the Person holding such Benefice, and to the Bishop of the Diocese, unless with the Consent of the Bishop of the Diocese, upon Pain of forfeiting to the Spiritual Person holding the Benefice a Sum not exceeding the Amount of his Stipend for Six Months, at the Discretion of the Bishop, which Sum may in such Case be retained out of the Stipend, if the same or any Part thereof shall remain unpaid; or if the same cannot be retained

out of the Stipend, may be recovered by the Spiritual Person holding the Benefice, as any Penalty or Forfeiture under this Act may be recovered. 57 Geo. III. c. 99.

LXIX. And be it further enacted, That it shall be lawful for the Bishop of the Diocese to license any Curate who is or shall be actually employed by the Rector, Vicar, or other Incumbent of any Church or Chapel, although no express Nomination of such Curate shall have been made to such Bishop by the said Rector, Vicar, or other Incumbent; and that the Bishop shall have Power to revoke summarily and without Process any Licence granted to any Curate employed in his Diocese, or subject to his Jurisdiction by virtue of this Act, and to remove such Curate for any Cause which shall appear to such Bishop to be good and reasonable; subject nevertheless to an Appeal to the Archbishop of the Province, and to be determined in a summary Manner.

Bishop may license Curates employed without Nomination, revoke any Licence, and remove Curate, subject to Appeal to the Archbishop.

LXX. And be it further enacted, That every Bishop who shall grant or revoke any Licence to any Curate under this Act shall and he is hereby required to cause a Copy of such Licence or Revocation to be entered in the Registry of the Diocese within which the Benefice in respect whereof any such Licence shall be granted or Revocation made shall be locally situate; and an Alphabetical List of such Licences and Revocations shall be made out by the Registrar of each Diocese, and entered into a Book, and kept for the Inspection of all Persons, upon Payment of the Sum of Three Shillings and no more; and a Copy of every such Licence and Revocation with respect to any Benefice shall be transmitted by the said Registrar to the Churchwardens or Chapelwardens of the Parish, Township, or Place to which the same relates, within One Month after the Grant of such Licence or Revocation thereof, to be by them deposited in the Parish Chest; and every Registrar who shall refuse or neglect or omit to make any such Entry, or to transmit any such Copy, shall forfeit for every such Offence or neglect the Sum of Five Pounds, to be recovered as any Penalty or Forfeiture may be recovered under this Act: Provided always, that every such Registrar shall, for every such Copy transmitted to such Churchwardens or Chapelwardens as aforesaid, be entitled to demand and have from such Churchwardens or Chapelwardens a Fee of Ten Shillings and no more; and such Fee shall be allowed in the Accounts of such Churchwardens or Chapelwardens.

Licence to Curates and Revocations of such Licences, to be entered in the Registry of the Diocese.

LXXI. And be it further enacted, That all the Powers, Authorities, Provisions, Regulations, Penalties, Forfeitures, Clauses, Matters, and Things in this Act contained in relation to Bishops in their Dioceses, shall extend and be construed to extend to the Archbishops in the respective Dioceses of which they are Bishops, and also in their own peculiar Jurisdictions, as fully and effectually as if the Archbishops wer named with the Bishops in every such Case.

C[illegible] relating to [illegible] ply [illegible]

LXXII. And be it further enacted, That in all Cases wherein the Term Benefice is used in this Act, the said Term shall be understood and taken to mean Benefices with Cure, and no others, and to comprehend therein, for the Purposes of this Act, all Donatives, Perpetual Curacies, and Parochial Chapelries.

Definition of the Term Benefice.

LXXIII And be it further enacted, That every Archbishop and Bishop, within the Limits of whose Province or Diocese respectively any Benefice, respectively, Exempt or Peculiar, shall be locally situate, shall have, use, and exercise all the Powers and Authorities necessary for the due Execution by them respectively of the Provisions and Purposes of this Act, and for enforcing the same with regard thereto respectively, as such Archbishop and Bishop respectively would have used and exercised if the same were not Exempt or Peculiar, but were subject in all respects to the Jurisdiction of such

Power of Archbishops and Bishops as to Benefices, &c. Exempt or Peculiar, locally situate within their Provinces;

57 Geo. III. c. 99.

And also as to Benefices, &c. situate in more than One Province, or between the Limits of Two.

Archbishop or Bishop; and where any Benefice, Exempt or Peculiar, shall be locally situate within the Limits of more than One Province or Diocese, or where the same or any of them shall be locally situate between the Limits of the Two Provinces, or between the Limits of any Two or more such Dioceses, the Archbishop or Bishop of the Cathedral Church, to whose Province or Diocese the Parish Church of the same respectively shall be nearest in local Situation, shall have, use, and exercise all the Powers and Authorities which are necessary for the due Execution of the Provisions of this Act, and enforcing the same with regard thereto respectively, as such Archbishop or Bishop could have used if the same were not Exempt or Peculiar, but were subject in all respects to the Jurisdiction of such Archbishop or Bishop respectively, and the same, for all the Purposes of this Act, shall be deemed and taken to be within the Limits of the Province or Diocese of such Archbishop or Bishop; provided that the Peculiars belonging to any Archbishoprick or Bishoprick, though locally situate in another Diocese, shall continue subject to the Archbishop or Bishop to whom they belong, as well for the Purposes of this Act as for all other Purposes of Ecclesiastical Jurisdiction.

Peculiars shall be subject to the Archbishop or Bishop to whom they belong.

In every Case in which Jurisdiction is given to Bishop, &c. all concurrent Jurisdiction to cease.

LXXIV. And be it further enacted, That in every Case in which Jurisdiction is given to the Bishop of the Diocese, or to any Archbishop, under the Provisions of this Act, and for the Purposes thereof, and the enforcing the due Execution of the Provisions thereof, all other and concurrent Jurisdiction in respect thereof shall wholly cease, and no other Jurisdiction in relation to the Provisions of this Act shall be used, exercised, or enforced, save and except such Jurisdiction of the Bishop and Archbishop under this Act; any Thing in any Act or Acts of Parliament, or Law or Laws, or Usage or Custom to the contrary notwithstanding.

Monitions and Sequestrations.

LXXV. And be it further enacted, That in all Cases where Proceedings under this Act are directed by Monition and Sequestration, such Monition shall issue under the Hand and Seal of the Bishop, and being duly served shall be returned, with a Certificate of Service, into the Registry of the Consistorial Court of such Bishop; and thereupon it shall be competent for the Party monished to shew Cause by Affidavit or otherwise, as the Case may require, against the Sequestration issuing; and unless sufficient Cause be shown to the contrary, the Sequestration shall issue under the Seal of the said Consistorial Court, and in such Form as is commonly used on that Behalf.

Penalties to be recovered by Monition and Sequestration.

LXXVI. And be it further enacted, That it shall be lawful for the Bishop of any Diocese in which any Spiritual Person shall hold any Dignity or Benefice, or shall serve as Stipendiary Curate, to recover any Penalty incurred under this Act, in a summary Way, by Monition and Sequestration, to be issued in the Manner by this Act directed, with the like Powers and Authorities, and subject to the like Restrictions in respect to the Remission and Repayment of such Penalty, as are by this Act particularly provided in respect to Penalties for Non-residence: Provided always, that no Spiritual Person against whom any such Proceeding shall have been had by any Bishop for the Recovery of any Penalty, shall thereafter be subject to any Action at Law by any Informer or other Person for the Recovery of any Penalty for the same Offence in respect of which such Proceeding shall have been so had by the Bishop as aforesaid.

Recovery of Fees, &c.

LXXVII. And be it further enacted, That any Fees, Charges, Costs, or Expences incurred or directed to be paid by any Spiritual Person under the Provisions of this Act, which shall remain unpaid for the Period of Twenty-one Days after Demand thereof in Writing delivered to or left at the usual or last Place of Abode of the Spiritual Person liable to the Payment thereof, may be recovered by Monition and Sequestration, to be issued in the Manner directed by this Act.

LXXVIII. Provided always, and be it further enacted, That none of the Provisions of this Act shall extend or be construed to extend to render void or invalid, before the Thirty-first Day of *December* next, any Licence or Exemption which would have been otherwise valid and effectual, nor to require any Licence to be taken before the said Thirty-first Day of *December* next, which would not have been required by Law before the passing of this Act.

57 Geo III. c. 99. Act not to invalidate Licences before 31st Dec. nor to require any Licence before that Time.

LXXIX. And be it further enacted, That no Commission issued by any Bishop to any Commissary or Commissaries appointed to administer the Oaths required to be taken by any Curate for the Purpose of any Licence or Licences granted under the Provisions of this Act shall be subject to any Stamp Duty; any Thing contained in any Act or Acts of Parliament to the contrary notwithstanding.

Commission to administer Oaths not to be subject to Stamp Duty.

LXXX. And be it further enacted, That nothing in this Act contained shall extend or be construed to extend to alter or affect His Majesty's Royal Prerogative in the granting of Dispensations for Non-residence upon Benefices, as the same now exists by Law.

Act not to affect His Majesty's Prerogative in granting Dispensations.

LXXXI. And be it further enacted, That no Parsonage that hath a Vicar endowed, or that hath a perpetual Curate, and having no Cure of Souls, shall be deemed or taken to be a Benefice within the Intent and Meaning of this Act.

Parsonage without Cure of Souls not deemed a Benefice.

LXXXII. And be it further enacted, That no Archbishop or Bishop having or who shall have any Benefice shall by reason of Non-residence upon the same be subject or liable to any Penalties or Forfeitures: Provided always, that any Archbishop or Bishop who shall hold any Benefice *in commendam* with his Archbishoprick or Bishoprick, shall nominate and appoint a resident Curate, according to the Provisions of this Act.

No Archbishop or Bishop shall be liable to the Penalties for Non-residence.

LXXXIII. And be it further enacted, That nothing in this Act contained shall be deemed, construed, or taken to derogate from, diminish, prejudice, alter, or affect, otherwise than is expressly provided, any Powers, Authorities, Rights, or Jurisdiction already vested in or belonging to any Archbishop or Bishop under or by virtue of any Statute, Canon, Usage, or otherwise howsoever.

Not to affect Powers of Bishops;

LXXXIV. And be it further enacted, That nothing in this Act contained shall extend or be construed to extend to repeal or alter the Provisions contained in any Act of Parliament, or any other Provision of Law, for the due Celebration of Divine Service in any Church or Chapel, or for the Discharge of any other Duty of any Rector or Vicar, or Person holding any Benefice, by himself or his Curate.

nor the due Celebration of Divine Service.

LXXXV. And be it further enacted, That no Provision in this Act contained shall extend or be construed to extend to that Part of the United Kingdom called *Ireland*.

Act not to extend to Ireland.

END OF THE ADDENDUM.